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Deputy Executive Director, Operations

**November 20, 2015**

**REQUEST FOR PROPOSAL (RFP)**

**Regional Resource Center Operations**

NOTICE IS HEREBY GIVEN that the Metropolitan Transportation Commission (MTC) invites your firm to submit a proposal to serve as the Regional Resource Center Operations.

The Request for Proposal (RFP) documents for this project are available for download on the MTC website at <http://procurements.mtc.ca.gov/>. Proposers are responsible for checking the website for any Addenda to this RFP. Responses should be submitted in accordance with the instructions set forth in the RFP.

Interested firms must submit an original and five (5) copies, as well as one electronic PDF version, of their proposal by **4 p.m. on Tuesday, December 15, 2015**, in accordance with the instructions contained in the RFP. Other key RFP Dates are listed in Section V, Contractor Selection Timetable of the RFP.

*MTC Point of Contact*  
Ursula Vogler, Project Manager  
MTC  
Joseph P. Bort MetroCenter  
101 Eighth Street  
Oakland, CA 94607-4700  
Tel: 510/ 817-5785  
E-mail: [uvogler@mtc.ca.gov](mailto:uvogler@mtc.ca.gov)

Thank you for your interest.

Sincerely,

Steve Heminger  
Executive Director

SH: UV

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## I. MTC AND PROJECT DESCRIPTION

### ***A. Background***

MTC was created by the state Legislature in 1970 (California Government Code § 66500 *et seq.*) to serve as the transportation planning, coordinating and financing agency for the nine-county San Francisco Bay Area.

The Bay Area Headquarters Authority (BAHA) was created as a Joint Powers Authority (JPA) between the Bay Area Toll Authority (BATA) and MTC to purchase and develop a Regional Agency Headquarters Facility for three regional agencies: MTC, the Bay Area Air Quality Management District (“Air District”) and the Association of Bay Area Governments (ABAG). Purchased in October 2011, the new facility is located in the Rincon Hill District of San Francisco at 375 Beale Street. BAHA has hired the architectural firm of Perkins + Will to redesign the structure and adapt it to its new use.

Expected to open in early 2016, the Regional Headquarters Authority Facility will help foster collaboration among the three regional agencies through co-location. The physical proximity made possible by joint occupancy will help cement the bonds among the regional agencies and facilitate cooperation and coordination among these public bodies as they pursue their interrelated missions in the areas of transportation, land use, climate change and sustainable growth.

### ***B. Project Description***

As more fully described in Appendix A, Scope of Work, the Regional Resource Center (RRC) Operator will provide visitors of 375 Beale Street with information and products related to the three regional agencies housed at this location (MTC, Air District and ABAG), specifically public transportation services, especially assistance with and purchase of MTC-managed projects, information on transportation alternatives and transit connections, including one-on-one travel training, air quality permits, among other topics. Specifically, responsibilities of the RRC will include:

- Providing information on Bay Area transportation alternatives, including bus, ferry, rail, bicycling and bike share, parking, and walking, among others;
- Providing point-to-point recommendations for alternatives to driving alone. This will include assisting people facing transportation challenges: youth, persons with disabilities, older adults, persons with limited incomes, etc. and acting as a proxy between visitors and MTC, county mobility management centers and other like resources;
- Vending Clipper® cards and adding value or transit passes to Clipper® cards;
- Vending FasTrak® toll tags, accepting payment for toll violations and adding value to toll tags;
- Selling Bay Area Bike Share cash memberships to qualified low income residents;
- Assisting visitors with completing Air District air quality permit applications;
- Assisting visitors with technology available within the RRC space;
- Selling transportation-related promotional items, potentially including commute gear, bicycle helmets, transportation-themed t-shirts and other memorabilia; and
- Providing resources for potential additional tasks as directed by the three other regional

agencies: Association of Bay Area Governments, Bay Area Air Quality Management District and the Bay Conservation and Development Commission.

The RRC will provide the above services Monday through Friday from 7 a.m. to 6 p.m. and limited hours on Saturday. In addition, the RRC Operator will hire part time trainee staff via Launchpath or another MTC-approved workforce training program, as further described in Appendix A, Scope of Work, allowing the RRC to serve dual purposes by both providing the public with transportation information and services, and also benefiting the community by providing employment training opportunities.

## **II. PROPOSER MINIMUM QUALIFICATIONS**

In order to be eligible to submit a proposal for this project:

- Proposer has successfully started and completed at least one (1) project within the past seven (7) years which demonstrates a minimum of three (3) years' experience providing technology aided, in-person customer service to the public; and
- Key personnel of the Proposer team must each have a minimum of two (2) years' experience providing in-person customer service to the public.

The proposal must include a reference for each project used to meet the Minimum Qualifications described above. The same project(s) and the same reference(s) can be used to meet all of the Minimum Qualifications.

## **III. SCOPE OF WORK, PERIOD OF PERFORMANCE, AND BUDGET**

### ***A. Scope of Work***

The scope of work for the project is provided in *Appendix A, Scope of Work*. The firm selected to enter into a contract ("Contractor") will be expected to perform all work and analysis necessary to complete the scope of work.

### ***B. Period of Performance***

MTC expects the work to commence on or about March 1, 2016, and to be completed no later than June 30, 2018. At MTC's sole option, the contract may be extended for three (3) additional years in increments of MTC's choosing, for work contemplated by *Appendix A, Scope of Work*.

### ***C. Budget***

MTC estimates a budget of six hundred forty-one thousand dollars (\$641,000) for this effort and has budgeted \$125,000 for this effort in Fiscal Year 2015-16. Additional funding and funding for future Fiscal Years is subject to approval of future MTC budgets.

## **IV. REQUESTS FOR CLARIFICATION OR EXCEPTIONS**

Any addenda will be posted on MTC's website. All Proposers are responsible for checking the website for any addenda to the bid documents.

Any requests for clarification of or exceptions to RFP requirements must be received by MTC no later than 4 p.m. on Friday, December 4, 2015, to guarantee a response or consideration. MTC reserves the right to reject any proposal that contains unauthorized conditions or exceptions.

## V. CONTRACTOR SELECTION TIMETABLE

4 p.m., on Friday, December 4, 2015	Closing date/time for receipt of requests for modifications/exceptions
No later than three (3) business days prior to the date proposals are due.	Deadline for protesting RFP provisions
<b>4 p.m., Tuesday, December 15, 2015*</b>	<b>Closing date/time for receipt of proposals</b>
Week of January 4, 2016*	Interviews/Discussions (if held)
Week of January 18, 2016*	Date for receipt of Best and Final Offers (if required)
Wednesday, February 10, 2015*	MTC Administration Committee Approval

*\*Interview, award and approval dates are approximate and are subject to change before or after the closing date of the RFP.*

## VI. SUBMITTAL OF PROPOSALS

1. Interested firms must submit an original and five (5) copies, as well as one electronic PDF version, of their proposal by **4 p.m. on Tuesday, December 15, 2015. Submission of an electronic copy of the proposal without hard copies will not satisfy the submission requirement. No proposals submitted solely by email and no faxed proposals will be considered.**
2. Proposals are to be addressed as follows:

Regional Resource Center Operations  
Attention: Ursula Vogler  
101 8<sup>th</sup> Street, 3<sup>rd</sup> Floor Receptionist  
Oakland, CA 94607
3. Proposer's name and return address must also appear on the envelope.
4. Proposals will be received only at the address shown above and **no later than the date and time indicated.** MTC is not responsible for deliveries delayed for any reason. Any proposals received after said date and time or at a place other than the stated address cannot be considered and will be returned to the Proposer unopened.
5. All proposals, whether delivered by an employee of the Proposer, U.S. Postal Service, courier or package delivery service, must be received and time stamped at the stated address **prior to or no later than the time designated.** The timestamp located on the 3<sup>rd</sup> floor at the receptionist

desk shall be considered the official timepiece for the purpose of establishing the time of receipt of proposals

6. Proposer agrees and acknowledges all RFP specifications, terms and conditions and indicates ability to perform by submission of a proposal.
7. A signed proposal submitted to MTC in response to this RFP shall constitute a binding offer from Proposer to contract with MTC according to the terms of the proposal for a period of 180 days after the proposals are due to MTC.
8. A proposal may be withdrawn at any time before the date and time when proposals are due by submitting a written request for its withdrawal to the MTC Project Manager.
9. This RFP does not commit MTC to award a contract or to pay any costs incurred by any Proposer in the preparation of a proposal in response to this RFP.
10. Only one proposal will be accepted from any one person, partnership, corporation, or other entity; however, several alternatives may be included in one response.
11. MTC reserves the right to accept or reject all proposals submitted, waive minor irregularities, request additional information, or revisions to offers, and negotiate with any or all Proposers.
12. MTC reserves the right in its sole discretion not to enter into any contract as a result of this RFP.
13. If the selected Proposer fails to enter into a contract with MTC in a timely manner as determined by MTC, in accordance with the terms and conditions of this RFP, MTC reserves the right to reject the proposal and enter into a contract with the next highest scoring Proposer.
14. Online Contractor Registration is required to be eligible for contract award. Proposers should visit <http://procurements.mtc.ca.gov/Contractors/Contractor-information.html> to register in the MTC Contractor Database.

## **VII. FORM OF PROPOSAL**

Proposals must be signed in ink and include a statement that the person or persons signing the proposal is/are authorized to authorize and submit the proposal on behalf of the Proposer. Page limits, where specified, are for single-sided print. Proposers are encouraged to print double-sided copies to save paper.

Proposal content and completeness are most important. Clarity is essential and will be considered in assessing the Proposer's capabilities.

Proposers must provide the information listed below. Any material deviation from these requirements may be cause for rejection of the proposal, as determined in MTC's sole discretion.

Each proposal must include the following:

A. Transmittal Letter

Proposals must include a transmittal letter signed by an official authorized to solicit business and enter into contracts for the firm and containing the name and telephone number of a contact person, if different from the signatory. Indicate whether there are any conflicts of interest, actual or apparent, that would limit the Proposer's ability to provide the requested services and describe the plan for mitigating such conflicts. Acknowledge the receipt of this RFP and any Addendum to the RFP. Indicate that the proposal is a firm offer to enter into a contract to perform work related to this RFP for a period of 180 days from the due date for proposals.

B. Title Page

Proposals must include a title page that includes the RFP subject, the name of the Proposer's firm, local address, telephone number, name of contact person, contact person's email address, and the date.

C. Table of Contents

Proposals must include a table of contents that includes a clear identification of the material by section and page number.

D. Overview and Summary

This section should clearly convey the Proposer's understanding of the nature of the work and the general approach to be taken, and identify any specific considerations. It should include, but not be limited to, the following:

1. A discussion of the project's purpose;
2. A summary of proposed approach; and
3. The assumptions made in selecting the approach.

E. Work Plan

This section should present a work plan for the tasks described in *Appendix A, Scope of Work*. The proposed work plan should:

1. Discuss how the Proposer will conduct the identified task. The proposal should discuss the tasks in sufficient detail to demonstrate a clear understanding of the project and component tasks. The proposal may include additional tasks or sub-tasks the Proposer believes necessary to accomplish the project goals. The schedule should show the expected sequence of tasks, subtasks and milestones.

2. Provide a staffing plan for each task. Provide an organizational chart that shows roles and responsibilities of key personnel and reporting structure, including reporting and communication relationships between MTC, Proposer staff, and subcontractors, if any.
3. Describe approach to managing resources and maintaining quality results. Include a description of the role of any subcontractors, their specific responsibilities, and how their work will be supervised to maintain quality results.
4. Identify and explain any problem areas and/or potential obstacles (such as maintaining schedule, budget overruns, feasibility, etc.) to successful completion of the Scope of Work, attached as *Appendix A*. Discuss methods, formal and informal, that you will use to track and resolve these problems/obstacles during the project.

#### F. Qualifications and References

1. Describe proposed team's qualifications specific to the requirements set forth in Section II, Proposer Minimum Qualifications. Identify the personnel, including subcontractors' personnel, whose expertise or experience addresses each of the specified needs. Proposers are welcome to identify and provide examples of any other qualifications they feel are critical to the successful completion of the Scope of Work attached as *Appendix A*.
2. Identify key personnel (including subcontractor personnel) and briefly discuss individual qualifications to perform each task. Each key personnel resume should not exceed two pages.
3. Provide a succinct description (one page maximum) of any previous projects similar to the Scope of Work attached as *Appendix A*, indicating the project title, duration, budget, sponsoring agency and sponsor project manager, and roles played by individuals proposed for this project. Include the name of the organization for whom the work was performed, year performed, name of the contact person and their telephone number. Also include the name and telephone number of a customer that was assisted through one of the cited projects as a customer reference.
4. Provide a list of references (including references for subcontractors) and their contact information.
5. Provide a summary of all contracts your firm (including subcontractors) has held with MTC, MTC SAFE, BATA, BAIFA or BAHA in the past three years, including a brief description of the scope of work, the contract amount, and date of execution.

#### G. Cost Proposal

Based on the tasks and staffing plan described in response to E.1 and E.2, listed above, provide a breakdown of the expected expenditures of funds for each task in each phase contained in *Appendix A*, Scope of Work. The budget should include, but is not limited to:

1. An overall project cost summary by Task and by year should be set forth on the Cost Proposal Form attached as *Appendix B* to this RFP
2. A line item budget should be submitted for task of the project. The line item budget should present a breakdown of costs by cost categories, including billing rates for key personnel and job classifications. The task budget should be set forth on the Cost Proposal Form attached as *Appendix B* to this RFP. A line item budget should also be submitted for proposed sub-Contractors with contracts estimated to exceed \$25,000. *Appendix B* is available in electronic spreadsheet format upon request. The line item budget is requested for evaluation purposes only; payment shall be based on Contractor's delivery of the required services or satisfactory deliverables, as applicable. .
3. Please include information (date and outcome) on the Proposer's most recent pre-award audit, if applicable.

#### H. California Levine Act Statement

Submit a signed Levine Act statement (*Appendix C*).

#### I. Insurance Provisions

Submit a signed acknowledgement that the Proposer agrees to provide the required certificates of insurance providing verification of the minimum insurance requirements listed in *Appendix D-1, Insurance Requirements*, within ten (10) days of MTC's notice to firm that it is the successful Proposer.

(See Section IX.B of the RFP for how to request exceptions to the minimum insurance requirements.)

#### J. Taxpayer Identification Number and Certification

Submit a W-9, Request for Taxpayer Identification Number and Certification (containing original signature) available at <http://www.irs.gov/pub/irs-pdf/fw9.pdf>.

#### L. Financial Responsibility

In a separate sealed envelope: Provide a copy of Proposer's most recent annual and past quarterly financial filing. The statements will not be considered part of the proposal for purposes of the California Public Records Act and will be reviewed to determine responsibility only. All financial statements will be returned to the Proposer prior to CONTRACTOR selection.

## VIII. PROPOSAL EVALUATION

### A. *Verification of Minimum Qualifications*

The MTC Project Manager will review proposals to ensure that each proposal meets the Minimum Qualifications set out in Section II, Proposer Minimum Qualifications of this RFP. Proposers failing to meet the Minimum Qualifications will not be considered.

### ***B. Review for General Responsiveness***

The MTC Project Manager, in consultation with the MTC's Office of General Counsel, will conduct an initial review of the proposals for general responsiveness and inclusion of the items requested in Section VII, Form of Proposal. Proposers failing to meet the Minimum Qualifications listed in this RFP or to satisfy the federal Disadvantaged Business Enterprise (DBE) requirements (if applicable), will not be considered responsive. Also, any proposal that does not include enough information to permit the evaluators to rate the proposal in any one of the evaluation factors listed below will be considered non-responsive and will not be evaluated. A proposal that fails to include one or more items requested in Section VII, Form of Proposal may be considered responsive, if evaluation in every criterion is possible. MTC reserves the right to request additional information from responsive Proposers prior to evaluation.

### ***C. Evaluation Panel and Evaluation Criteria***

Responsive proposals will then be evaluated by an evaluation panel of MTC and partner agency staff. The evaluation of the proposals shall be within the sole judgment and discretion of the evaluation panel.

All contact during the evaluation phase shall be through the MTC Project Manager only. Proposers shall neither contact nor lobby any evaluation panel members during the evaluation process. Any attempt by Proposer to contact and/or influence members of the evaluation panel may result in disqualification of Proposer.

Responsive proposals shall be evaluated on the basis of the following evaluation factors, with their relative importance indicated by percentages:

1. Individual project staff and firm expertise and experience in similar types of projects involving: performing retail sales/operations, information dissemination projects and/or in-person customer service projects; and maintaining electronic displays and equipment. Priority will be given to experience with similar projects that are transportation related (25%);
2. Approach to conducting and completing the project, including but not limited to: understanding of the purpose and requirements of the project; proposed work plan; strategy for managing all resources, including personnel coordination with contract manager and partners; and dealing with project challenges or obstacles (25%);
3. Cost effectiveness (25%);

4. Cost: Each Proposer’s cost proposal will be weighted relative to the lowest cost proposal submitted in response to this RFP, as shown in the following example follows (15%):

Example:

<b>Proposer</b>	<b>Proposed Cost</b>	<b>Calculation of Points</b>	<b>Points Assigned</b>
Proposer A	\$250,000	Full 15 percentage points	15
Proposer B	\$269,000	\$250K divided by Proposer B cost, multiplied by 15	13.9
Proposer C	\$275,000	\$250K divided by Proposer C cost, multiplied by 15	13.6

5. Written/Oral Communications: As evidenced in the submitted proposal and through oral interviews (if held) (10%).

***D. Proposer Discussions***

Following the initial evaluation, the evaluation panel may elect to recommend award to a particular Proposer (with or without interviews), or to enter into discussions with a “short list” of Proposers, consisting of those Proposers reasonably likely, in the opinion of the panel, to be awarded the contract.

The purpose of discussions with a Proposer on the “short list” will be to identify to that Proposer’s specific deficiencies and weaknesses in its proposal and to provide the Proposer with the opportunity to consider possible approaches to alleviating or eliminating them. These deficiencies or weaknesses may include such things as technical issues, management approach, cost, or team composition. Discussions may take place through written correspondence and/or during face-to-face interviews. The Proposer’s project manager, as well as other key personnel identified by the evaluation panel, will be expected to participate in any discussions. A Proposer on the “short list” invited to participate in discussions will be expected to provide a presentation limited to 20 minutes consisting of an overview of its approach to the Project.

***E. Request for Best and Final Offer***

Following discussions, if held, Proposers on the “short list” will be given the opportunity to revise their written proposals to address the concerns raised during discussions through issuance by MTC of a Request for Best and Final Offer (BAFO). Following receipt of the BAFOs, the evaluation panel will evaluate the BAFOs against the evaluation criteria.

MTC reserves the right not to convene oral interviews or discussions, and to make an award on the basis of initial proposals. Accordingly, each initial proposal should be submitted on the most favorable terms from a price and a technical viewpoint. References may be contacted at any point in the evaluation process.

The panel will recommend a Proposer to the MTC Executive Director, based on their evaluation of the written proposals or BAFOs and oral interviews or discussions (if held). The Executive

Director will review the recommendation and, if he agrees, he will approve the award or forward the recommendation to the appropriate MTC Committee for approval (if required).

## **IX. GENERAL CONDITIONS**

### ***A. Award***

Any award made will be to the Proposer whose proposal is most advantageous to MTC based on the evaluation criteria defined in Section VIII. If the selected firm fails to enter into a contract with MTC in a timely manner as determined by MTC, in accordance with the terms and conditions of this RFP, MTC reserves the right to reject the proposal of the selected firm and enter into a contract with the next highest scoring firm.

### ***B. Contract Arrangements***

MTC Standard Services Contract is attached as *Appendix D*. If a Proposer wishes to propose a change to any standard MTC contract provision, the provision and the proposed alternative language must be submitted prior to the closing date for receipt of requests for clarifications/exceptions. If no such change is requested, the Proposer will be deemed to accept MTC's standard contract provisions, unless such language is protested in accordance with Section C below.

The selected Contractor will be required to maintain insurance coverage, during the term of the contract, at the levels described in *Appendix D-1, Insurance Requirements*. Proposer agrees to provide the required certificates of insurance providing verification of the minimum insurance requirements in *Appendix D-1*, within ten (10) business days of MTC's notice that it is the successful Proposer. Requests to change MTC's insurance requirements should be submitted on or prior to the closing date for receipt of requests for clarifications/exceptions. MTC will review the requests and issue an addendum if material changes requested by a prospective Proposer are acceptable. Objections to MTC determinations on requests to change insurance requirements pursuant to the protest provisions of this RFP must be brought to MTC's attention no later than the deadline for protesting RFP provisions or compliance with all material insurance requirements will be assumed.

The contract resulting from this RFP will be firm fixed price, with payment based on delivery of the required services or satisfactory deliverables as applicable, by Contractor.

### ***C. Selection Disputes***

A Proposer may object to a provision of the RFP on the grounds that it is arbitrary, biased, or unduly restrictive, or to the selection of a particular Proposer on the grounds that MTC procedures, the provisions of the RFP or applicable provisions of federal, state or local law have been violated or inaccurately or inappropriately applied by submitting to the Project Manager a written explanation of the basis for the protest:

1. No later than 4:00 p.m. on the third business day prior to the date proposals are due, for objections to RFP provisions; or

2. No later than 4:00 p.m. on the third business day after the date the firm is notified that it did not meet the minimum qualifications or was found to be non-responsive; or
3. No later than 4:00 p.m. on the third business day after the date on which the firm is notified that it was not selected, or if applicable the date the appropriate committee authorizes award, whichever is later, for objections to Proposer selection.

Except with regard to initial determinations of non-responsiveness, the evaluation record shall remain confidential until the MTC Administration Committee authorizes award.

Protests of recommended awards must clearly and specifically describe the basis for the protest in sufficient detail for the MTC review officer to recommend a resolution to the MTC Executive Director.

The MTC Executive Director will respond to the protest in writing, based on the recommendation of a staff review officer. Should a Proposer wish to appeal the decision of the MTC Executive Director, it may file a written appeal with the MTC Administration Committee, no later than 4:00 p.m. on the third business day after receipt of the written response from the MTC Executive Director. The MTC Administration Committee's decision will be the final agency decision.

Authorization to award an agreement to a particular Proposer by MTC shall be deemed conditional until the expiration of the protest period or, if a protest is filed, the issuance of a written response to the protest by the MTC Executive Director or, if the decision of the MTC Executive Director is appealed, the issuance of the MTC Administration Committee's decision.

Protests of recommended awards must clearly and specifically describe the basis for the protest in sufficient detail for the MTC review officer to recommend a resolution to the MTC Section Director.

The MTC Section Director responsible for the procurement will respond to the protest in writing, based on the recommendation of a staff review officer. Should a Proposer wish to appeal the decision of the MTC Section Director, it may file a written appeal with the MTC Executive Director, no later than 4:00 p.m. on the third business day after receipt of the written response from the Section Director. The MTC Executive Director's decision will be the final agency decision.

Authorization to award an agreement to a particular Proposer by MTC shall be deemed conditional until the expiration of the protest period or, if a protest is filed, the issuance of a written response to the protest by the MTC Section Director or, if the decision of the MTC Section Director is appealed, the issuance of the MTC Executive Director's decision.

#### ***D. Public Records***

This RFP and any material submitted in response to this RFP are subject to public inspection under the California Public Records Act (Government Code §6250 *et seq.*), unless exempt by law. Other than proprietary information or other information exempt from disclosure by law, the content of proposals submitted to MTC will be made available for inspection consistent with its policy regarding Public Records Act requests.

If the Proposer believes any proposal content contains trade secrets or other proprietary information that the Proposer believes would cause substantial injury to the Proposer's competitive position if disclosed, the Proposer may request that MTC withhold from disclosure such proprietary materials by marking each page containing proprietary information, including financial information, if any, required to be submitted under Section VII of this RFP, as confidential and shall include the following notice at the front of its proposal:

“The data on the following pages of this proposal, including financial information, submitted under Section VII of the RFP marked along the right margin with a vertical line, contain technical or financial information that constitute trade secrets and/or that, if disclosed, would cause substantial injury to the Proposer's competitive position. The Proposer requests that such data be used for review by MTC only, but understands that exemption from disclosure will be limited by MTC's obligations under the California Public Records Act. If an agreement is awarded to the Proposer submitting this proposal, MTC shall have the right to use or disclose the data, unless otherwise provided by law. [List pages].”

Failure to include this notice with relevant page numbers shall render any “confidential/proprietary” markings inadequate. Individual pages shall accordingly not be treated confidentially. **Any language purporting to render the entire proposal confidential or proprietary will be regarded as ineffective and will be disregarded. In addition, the Proposer may not designate any required proposal forms or the cost proposal as confidential. Consequently, any language purporting to render any proposal forms or the cost proposal as confidential or proprietary will be regarded as ineffective and will be disregarded.**

In the event properly marked data is requested pursuant to the California Public Records Act, the Proposer will be advised of the request. If the proposal requests that MTC withhold such data from disclosure and MTC complies with the Proposer's request, the Proposer shall assume all responsibility for any challenges resulting from the non-disclosure; indemnify and defend MTC and hold it harmless from and against all claims, legal proceedings, and resulting damages and costs (including but not limited to attorneys' fees that may be awarded to the party requesting such Proposer information); and pay any and all costs and expenses relating to the withholding of the Proposer information.

If the Proposer does not mark each page containing proprietary information as confidential, does not include the statement described above at the front of its proposal, and does not request that MTC withhold information marked as confidential and requested under the California Public Records Act, MTC shall have no obligation to withhold the information from disclosure, and the Proposer shall not have a right to make a claim or maintain any legal action against MTC or its commissioners, officers, employees or agents in connection with such disclosure.

#### ***E. Key Personnel***

Key Proposer personnel assigned to the project are expected to remain on the project. Any change in key personnel on the proposed project team is subject to prior written approval of

MTC. Removal of any key personnel identified in the proposal without written consent of the MTC Project Manager may be considered a material breach of contract.

#### ***F. Conflicts Of Interest***

By submitting a proposal, the Proposer represents and warrants that no commissioner, officer or employee of MTC is in any manner interested directly or indirectly in the proposal or in the contract that may be made under it or in any profits expected to arise therefrom, as set forth in California Government Code Section 1090.

The Proposer further warrants and represents that it presently has no interest and agrees that it will not acquire any interest that would present a conflict of interest under California Government Code Sections 1090 *et seq.* or 87100 *et seq.* during the performance of services under any contract resulting from this RFP and that it will not knowingly employ any person having such an interest. Violation of this provision may result in the contract being deemed void and unenforceable.

Whenever MTC is awarding a contract that involves the rendering of advice, it will consider whether there exists the potential for bias, because of other activities, relationships or contracts of the Proposer, and if so, whether any potential bias can be mitigated acceptably by MTC and the Proposer. After award, the winning Proposer shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under the agreement resulting from this and other MTC solicitations. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to MTC; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other project.

Proposer shall not engage the services of any subcontractor or independent contractor on any work related to this RFP if the subcontractor or independent contractor, or any employee of the subcontractor or independent contractor, has an actual or apparent organizational conflict of interest related to work or services contemplated under this RFP.

#### ***G. Personally Identifiable Information***

Proposer agrees to comply with the special provisions related to the access and protection of personally identifiable information set forth in Attachment F, Special Conditions Relating to Personally Identifiable Information of Appendix D, MTC Standard Contractor Contract.

#### ***H. Web-Based Communication***

Proposer agrees to submit all communication and required documentation, including but not limited to invoices, requests for contract modifications, etc. to the MTC Project Manager or his/her designee via a web-based system designated by MTC to which MTC will provide system access.

#### ***I. Payment, Sub-Contractor and Prevailing Wage Information***

Proposer agrees to submit payment, sub-contractor utilization and if applicable certified payroll information for contracts with prevailing wage requirements via a web-based system designated by MTC to which MTC will provide system access.

## **APPENDIX A, SCOPE OF WORK**

The purpose of the Regional Resource Center is to provide visitors at 375 Beale Street with information and products related to the agencies that will be located at 375 Beale Street, including the Association of Bay Area Governments (ABAG), the Bay Area Air Quality Management District (Air District), the Bay Area Toll Authority (BATA), the Bay Area Infrastructure Financing Authority (BAIFA) and the Metropolitan Transportation Commission (MTC, and, together with ABAG, Air District, BATA, BAHA, and BAIFA, the “Agencies”). These services include: Bay Area public transportation services, especially assistance with and purchase of BATA- and MTC-managed projects (e.g., FasTrak<sup>®</sup>, Clipper<sup>®</sup>, etc.), information on transportation alternatives and transit connections, including one-on-one travel training, assistance with applications for Air District permits, and providing information on ABAG projects and programs, among other functions.

The Scope of Work for this project consists of three tasks:

- 1) Set-up/Planning/Design
- 2) Operations of one Regional Resource Center location, at 375 Beale Street in San Francisco (Center)
- 3) Contract management

### **TASK I: SET-UP/PLANNING/DESIGN**

In conjunction with the MTC Project Manager, Contractor will develop the following work products in preparation for the opening of the Regional Resource Center:

1. Staffing and equipment plan and schedule: this shall include development of appropriate staffing levels during open hours, including both pre- and post-open shifts. Staffing plan/schedule shall identify specific staff members (with a minimum of at least one staff member available at all times) for each shift. Equipment plan shall include a list of equipment to be procured by Contractor.
2. Training plan: this shall outline reference information and operational knowledge needed to perform all job necessary job duties, including:
  - BATA, BAIFA or MTC managed projects, including FasTrak<sup>®</sup>, Clipper<sup>®</sup>, Bay Area Bike Share, and Bay Area Express Lanes, among others;
  - Bay Area transportation network, especially transit properties and programs in and around San Francisco;
  - Air District programs, including permits, Spare the Air program, among others;
  - ABAG programs including Bay Trail, Bay REN, Resiliency program, estuary program, Green Business Program, among others;
  - Locational and general business information for 375 Beale Street, in order to guide and assist visitors at 375 Beale Street;
  - Knowledge of how to access local/regional information on the Internet; and
  - Basic standards of customer service expected for the successful completion of the work tasks.

*Deliverables 1.0, due within 60 days of execution of MTC Standard Services Contract:  
1a) Staffing and Equipment Plan and Schedule  
1b) Training Plan*

## **TASK II: OPERATIONS**

Contractor will provide Bay Area transportation, transit and other related information and information about the Agencies and their programs to the public at the Center.

Contractor will maintain all operational aspects of the Center, including, but not limited to the following:

- Greet, provide directional information and answer general questions made by visitors to the Center;
- Refer visitors to information on then-current Agency projects and programs;
- Provide Bay Area transportation information via online sources, including 511.org and other web properties, as appropriate. Printed material may be provided, although electronic information is preferred;
- Provide customer service for Agency-managed products including, but not limited to: FasTrak<sup>®</sup>, Clipper<sup>®</sup> and Bay Area Bike Share. This includes:
  - Vend Clipper<sup>®</sup> cards and add value or transit products to cards. Contractor will enter into appropriate retailer agreement;
  - Vend FasTrak<sup>®</sup> toll tags, add value to toll tags and accept payment for toll violations. Contractor will enter into appropriate retailer agreement(s); and
  - Sell Bay Area Bike Share cash memberships to qualified low income residents;
- Direct customers to appropriate locations if/when an issue arises that Center staff cannot resolve:
  - FasTrak<sup>®</sup> issues will be resolved at 375 Beale, within the FasTrak<sup>®</sup> Customer Service Center;
  - Clipper<sup>®</sup> card configuration and customer service issues may be resolved by referring customers to Clipper<sup>®</sup> Customer Service or referring to in-person resources, as appropriate; and
  - Bay Area Bike Share customer service issues will be resolved at a location to be determined;
- Provide customer consultation services on transportation alternatives in the Bay Area. This will require providing or training staff who have an extensive knowledge of the Bay Area's transportation network and alternatives, and includes:
  - Providing point-to-point recommendations for alternatives to driving alone. This could include assisting people facing transportation challenges: youth, persons with disabilities, older adults, persons with limited incomes, etc.;

- Providing transportation resource information, including: 511, 311, Bay Area's Mobility Management Center information, among others;
- Providing regular feedback to MTC PM on recurring or common themes identified in serving such customers and strategies deployed to assist such customers and assisting MTC PM with documenting information;
- Reporting to MTC any malfunction of electronic 511 Real Time departure time information via electronic displays in the Center;
- Sell Bay Area Bike Share discount program memberships. Parameters for qualification of the discount membership including verification of eligibility of discount criteria (e.g., Muni Lifeline Pass, PG&E CARE enrollment verification, etc.);
- Sell promotional items to the public, but only to the extent required by MTC and at prices approved by MTC;
- Successfully operate and maintain all aspects of operations including computers, cash handling, telephone line, and Internet access;
- Operate MTC-provided computers/interactive kiosks with Internet access during all hours of operation. Report broken computers/interactive kiosks or Internet downtime to MTC, as needed;
- Procure, provide and maintain cash register, equipment necessary to secure cash onsite and other electronic equipment that will assist customers to pay cash, Visa or MasterCard (including chip cards) for products;
- Accept cash, Visa, or MasterCard (including chip cards) for all payments and provide customer with a receipt;
- Accept transit benefit cards for transit fare payment;
- Maintain the Center, related signage and electronic displays;
- Keep a clean and orderly work space, with all workspaces clean and free of clutter; and
- Ensure Center personnel are courteous and helpful to all customers.

The Center will be open for services, at a minimum, from 7:00 am to 6:00 p.m., Monday through Friday and from 9 a.m. to 2 p.m. on Saturdays, except for the following three holidays:

- New Year's Day
- Thanksgiving Day
- Christmas Day

Contractor must meet the following sub-tasks and stipulations, listed below.

#### A) Staffing

Contractor will be responsible for the staffing of the Center. Contractor will:

- Provide at least one employee at all times during open business hours to answer transportation-related questions and sell products. More staff may be needed during times when customer volume is known to increase;

- Hire part-time trainee staff via Launchpath or another MTC-approved employee training program (Program), which is expected to be sponsored by or in partnership with a community college or other public or non-profit entity. Contractor will provide Program staff with hands-on experience in customer service and transportation logistics, among other functions. Employees hired via Program are expected to have a limited duration of employment, but could be considered for continuation of employment, if appropriate. Contractor is expected to have at least one Program employee during each academic semester unless otherwise approved by the MTC Project Manager;
- Coordinate all staffing logistics, including maintenance of a staffing plan and schedule;
- Provide employees who are neat, clean and appropriately dressed at all times, and ensure that said personnel will conduct themselves in an appropriate manner; and
- Ensure that employees proactively and politely greet and serve all customers.

#### B) Training

Contractor will be responsible for training of all new and existing staff. Contractor will:

- Conduct staff training in accordance with the training plan prior to staff's start date. Contractor will work with pre-identified MTC staff on transportation projects and programs and related information;
- Conduct ongoing training to staff in accordance with the training plan;
- Provide adequate transportation reference information (for electronic referral). Information will be available to staff at all times and will include exhaustive information on all modes available in the Bay Area;
- Ensure that all staff are knowledgeable about Bay Area transportation systems and about the Agencies regional projects and programs; and
- Ensure that staff are trained on the sale of Clipper<sup>®</sup> cards, value and transit products, FasTrak<sup>®</sup> toll tags, value and violations payments; Bay Area Bike Share discount membership; and Air District permitting; among other topics, as appropriate;

#### C) Information Dissemination

The Center will distribute/display several types of information in printed and digital formats. All materials on display, all content shown on the display panels and computer screens, and all signage used at the Center, etc., must be reviewed and approved by the MTC Project Manager prior to being displayed at the Center location.

##### 1) In-person Information

Contractor is responsible to provide in-person information to members of the public. This information includes:

- General information about the Agencies and the 375 Beale location, including directional/location and Agency contact information;
- Bay Area trip planning options, including various Bay Area routes and modes; and
- Basic information for programs managed Agencies. These include questions related to FasTrak<sup>®</sup>, Clipper<sup>®</sup>, and Bay Area Bike Share, among others.

##### 2) Digital Information

Contractor is responsible to maintain and display MTC-provided flat panel screens, computers and kiosk terminals, at the Center. Contractor shall:

- Ensure that all flat panel screens, computers and terminals are in working order during business hours;
- Provide up-to-date transportation information and promotional messages/transportation videos on the panels;
- Operate computers/kiosk terminals that have functions related to Agencies' programs;
- Ensure dissemination of 511 Real Time Transit program information and other related departure time information to be shown at Center.

### 3) Printed Materials

Contractor shall pick-up, store, display and distribute, general information/collateral of programs related to the Agencies. This includes any information/collateral to support programs highlighted at the Center. Contractor will also:

- Ensure that Center is stocked with current printed materials at all times with a focus on providing customers with relevant, regional information/collateral; and
- Display and distribute Clipper<sup>®</sup>, FasTrak<sup>®</sup> and Bay Area Bike Share (among other Agency projects or programs) information to customers during all hours of operation. Ensure that Center is stocked with this information at all times.

### D) Sell Clipper<sup>®</sup>, FasTrak<sup>®</sup>, Bay Area Bike Share and Promotional Items

Contractor will be responsible for selling and adding value or products to Clipper<sup>®</sup> cards and FasTrak<sup>®</sup> toll tags and accepting payment for FasTrak<sup>®</sup> violations. The Contractor must accept cash or Visa and MasterCard credit cards (including chip cards) and transit benefit cards as a form of payment for transactions. Any credit card fees charged to the Contractor will be paid for by the Contractor. Contractor will be required to negotiate and enter into any agreements necessary or appropriate to complete this task. Contractor will be capable of tracking sales on behalf of various programs and settling accounts weekly with MTC, ABAG, and Air District as well as meeting settlement requirements of Clipper<sup>®</sup>, FasTrak<sup>®</sup>, and Bay Area Bike Share which may include giving third parties access and permission to make daily debits from a bank account equal to daily sales. Except as permitted under direct agreements between Contractor and third parties relating to the Clipper<sup>®</sup>, FasTrak<sup>®</sup> and Bay Area Bike Share programs, Contractor shall not mark up or earn any commission or profit on such sales. Contract will only sell items as directed by MTC.

Specifically Contractor will sell/vend the following:

#### 1) Clipper<sup>®</sup>

The Center will serve as the main in-station distribution points for Clipper<sup>®</sup> cards, value and products. Contractor will:

- Vend Clipper<sup>®</sup> cards, value and products to the public;
- Provide the public with Clipper<sup>®</sup>- specific information. Answer in-person questions about the card and its use; and
- The Center may house and operate a Translink Retail Unit or a Ticket Office Terminal, which, in addition to the ability to add value or products to Clipper<sup>®</sup> cards, allows staff to register cards and issue Youth and Senior cards.

2) FasTrak®

- Vend FasTrak® toll tags.
- Add value to FasTrak® toll tags and accept payment of FasTrak® violations via a kiosk provided by Blackstone Merchant Services (Blackstone). Contractor will enter into agreement with Blackstone for this service.
- The Contractor may be requested to provide additional FasTrak® services at a later date subject to a duly-executed agreement amendment.

3) Bay Area Bike Share

- Sell Bay Area Bike Share discount memberships to qualified customers. Staff will verify qualifications of potential discount customers.

E) Distribute transportation-related promotional items as directed and approved by MTC

Examples of items for distribution include:

- Bicycle helmets
- Bicycle gear
- T-shirts
- Mugs, pens and other memorabilia
- Other items (upon approval of MTC Project Manager)

F) Bay Area Air Quality Management District Permits

Contractor will facilitate customer use of a self-service computer terminal at the Center for transactions relating to permits issues by Air District and accept payment for those transactions. Contractor will refer the customer to Air District staff for assistance, as appropriate.

**TASK III: CONTRACT MANAGEMENT**

Contractor will:

- Meet with the MTC Project Manager on a quarterly basis, or more frequently, as required, to address any concerns/complaints, review signage and display logistics, collateral inventory and any other issue MTC deems necessary; and
- Prepare quarterly reports evaluating the success of the Center in collaboration with the MTC Project Manager. This evaluation will be based on number of customers helped (including the number of customers provided with transportation consultation), the number of FasTrak® toll tags/Clipper® cards/Bay Area Bike Share discount memberships sold, and other measures to be mutually determined. The MTC Project Manager will use quarterly reports to create a final evaluation in conjunction with Contractor.

*Deliverable 2.0:*

*2a) Quarterly report outlining detailed information on collateral distributed, number of customers helped, FasTrak<sup>®</sup> toll tags/Clipper<sup>®</sup> cards/Bay Area Bike Share discount memberships sold, and other measures to be mutually determined.*

**APPENDIX B, COST PROPOSAL FORM<sup>1</sup>**

<b>Summary</b>				
	<b>FY 2015/16</b>	<b>FY 2016/17</b>	<b>FY 2017/18</b>	<b>Total</b>
Task 1 & 3 (Set-Up, Planning, Design and Contract Management)				
Task 2 Operations				
<b>Total Annual Contract</b>				

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<sup>1</sup> This document is available as an Excel spreadsheet by email upon request to Project Manager.

<b>Task 1 &amp; 3 (Set-Up, Planning, Design and Contract Management)</b>									
	FY 2015/16 (January 1, 2016 - June 30, 2016)			FY 2016/17			FY 2017/18		
Personnel (Job Title)	Estimated Hours	Hourly Rate	Estimated Costs	Estimated Hours	Hourly Rate	Estimated Costs	Estimated Hours	Hourly Rate	Estimated Costs
Fringe									
Overhead									
<b>Total Personnel</b>									
<b>Profit</b>									
<b>Total Monthly</b>									
<b>Total Annual</b>									

<sup>1</sup> This document is available as an Excel spreadsheet by email upon request to Project Manager.



**APPENDIX C, CALIFORNIA LEVINE ACT STATEMENT**

California Government Code § 84308, commonly referred to as the “Levine Act,” precludes an officer of a local government agency from participating in the award of a contract if he or she receives any political contributions totaling more than \$250 in the 12 months preceding the pendency of the contract award, and for three months following the final decision, from the person or company awarded the contract. This prohibition applies to contributions to the officer, or received by the officer on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee.

MTC’s commissioners include:

Alicia C. Aguirre	Federal D. Glover	Julie Pierce
Tom Azumbrado	Scott Haggerty	Libby Schaaf
Jason Baker	Anne W. Halsted	Bijan Sartipi
Tom Bates	Steve Kinsey	James P. Spering
David Campos	Sam Liccardo	Adrienne J. Tossier
Dave Cortese	Mark Luce	Scott Wiener
Dorene M. Giacomini	Jake Mackenzie	Amy Rein Worth

1. Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to any MTC commissioner in the 12 months preceding the date of the issuance of this request for qualifications?

YES  NO

If yes, please identify the commissioner: \_\_\_\_\_

2. Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contributions of more than \$250 to any MTC commissioners in the three months following the award of the contract?

YES  NO

If yes, please identify the commissioner: \_\_\_\_\_

Answering yes to either of the two questions above does not preclude MTC from awarding a contract to your firm. It does, however, preclude the identified commissioner(s) from participating in the contract award process for this contract.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
(SIGNATURE OF AUTHORIZED OFFICIAL)

\_\_\_\_\_  
(TYPE OR WRITE APPROPRIATE NAME, TITLE)

\_\_\_\_\_  
(TYPE OR WRITE NAME OF COMPANY)

**APPENDIX D, MTC STANDARD SERVICES CONTRACT**

**INSERT CON LONG**

PROFESSIONAL SERVICES AGREEMENT

between

METROPOLITAN TRANSPORTATION COMMISSION

and

TBD

for

Regional Resource Center Operations

FISCAL YEARS 2015-2016 thru 2017-2018

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PROFESSIONAL SERVICES AGREEMENT  
*Between METROPOLITAN TRANSPORTATION COMMISSION*  
And TBD  
For REGIONAL RESOURCE CENTER OPERATIONS

THIS PROFESSIONAL SERVICES AGREEMENT (this “Agreement”) is made and entered into as of the first day of January, 2016 by and between the Metropolitan Transportation Commission (herein called “MTC”), a regional transportation planning agency established pursuant to California Government Code § 66500 and \_\_\_\_\_, (herein called “CONTRACTOR”) partnership, \_\_\_\_\_[state of incorporation] corporation/ nonprofit corporation/joint venture organized under the laws of the State of \_\_\_\_\_.

**RECITALS**

WHEREAS, MTC will operates a Regional Resource Center at 375 Beale St, San Francisco, CA 94105 (herein called the “Project”); and

WHEREAS, the services required for the Project cannot be performed satisfactorily by the officers and employees of MTC; and

WHEREAS, the parties hereto now wish to enter into this Agreement pursuant to which CONTRACTOR will render professional services in connection with the Project as hereinafter provided;

NOW, THEREFORE, the parties hereto agree as follows:

**1. SCOPE OF SERVICES**

CONTRACTOR’s services are described in Attachment A, Scope of Work, attached hereto and incorporated herein by this reference. CONTRACTOR agrees to perform or secure the performance of all specified services within the maximum payment specified in Article 3, subject to the prior written approval of a work plan by Ursula Vogler (herein called “MTC Project Manager”). The MTC Project Manager is responsible for communication with CONTRACTOR and the administration of this Agreement. MTC’s Executive Director or designated representative may substitute a new MTC Project Manager by written notice to CONTRACTOR.

CONTRACTOR’s point of contact and the individual authorized to communicate to MTC on behalf of CONTRACTOR is TBD (“CONTRACTOR Project Manager”). A change in the CONTRACTOR Project Manager requires MTC’s prior written approval.

In the performance of its services, CONTRACTOR represents that it has and will exercise the degree of professional care, skill, efficiency, and judgment of Contractors with special expertise in providing such services, and CONTRACTOR represents that it carries and will maintain all applicable licenses, certificates, and registrations needed for the work in current and good standing.

### **1.1 PROGRESS REPORTS**

CONTRACTOR shall provide MTC with weekly and monthly progress reports according to the schedule and form approved by the MTC Project Manager.

### **1.2 SUBMISSION OF CONTRACT DOCUMENTS**

To the extent requested by the MTC Project Manager, CONTRACTOR shall submit communications and required documentation, including but not limited to invoices, requests for contract modifications, and information on payments received and made to subcontractors, subcontractor utilization, and if applicable, certified payrolls, to the MTC PROJECT MANAGER or his or her designee via one or more web-based systems designated by MTC to which MTC will provide CONTRACTOR with system access. MTC may withhold payment of invoices pending receipt of such communications and required documentation via the applicable web-based system.

## **2. PERIOD OF PERFORMANCE**

CONTRACTOR's services hereunder shall commence on or after January 1, 2016, and shall be completed no later than June 30, 2018 unless extended by a duly executed amendment or earlier terminated, as hereinafter provided. CONTRACTOR's services shall be performed in accordance with the schedule included in Attachment B, Project Schedule, attached hereto and incorporated herein by this reference.

## **3. COMPENSATION AND METHOD OF PAYMENT**

Subject to duly executed amendments, MTC will pay CONTRACTOR for its services as described in Attachment A, Scope of Work, a total amount, including (as applicable) labor, supervision, applicable surcharges such as taxes, insurance, and fringe benefits, indirect costs, overhead, profit, subcontractors' costs (including mark-up), travel, equipment, materials and supplies, expenses and any fixed fee, not to exceed \_\_\_\_\_ (\$\_\_\_\_\_) ("Maximum Payment"), comprised of \_\_\_\_\_ (\$\_\_\_\_\_) as a maximum payment for services under Task II and \_\_\_\_\_ (\$\_\_\_\_\_) as Maximum Payment for deliverables under Tasks I and III. MTC shall make payments to CONTRACTOR in

accordance with the provisions described in Attachment C, Compensation and Method of Payment, attached hereto and incorporated herein by this reference.

All invoices shall be submitted electronically via email to MTC at [acctpay@mtc.ca.gov](mailto:acctpay@mtc.ca.gov) or in writing to:

Attention: Accounting Section  
Metropolitan Transportation Commission  
Joseph P. Bort MetroCenter  
101 - 8th Street  
Oakland, CA 94607-4700

Payment shall be made by MTC within thirty (30) days of receipt of an acceptable invoice, approved by the MTC Project Manager or a designated representative.

#### **4. KEY PERSONNEL**

The key personnel to be assigned to this work by CONTRACTOR and, if applicable, their hourly rates and the estimated hours to be supplied by each are set forth in Attachment D, Key Personnel Assignments, attached hereto and incorporated herein by this reference. Substitution of any of the personnel named in Attachment D or a decrease in the hours provided to the project by such personnel of more than 10% requires the prior written approval of the MTC Project Manager or a designee. CONTRACTOR shall maintain records documenting compliance with this Article, and such records shall be subject to the audit requirements of Article 15. CONTRACTOR agrees that all personnel assigned to this work will be professionally qualified for the assignment to be undertaken. MTC reserves the right to direct removal of any individual, including key personnel, assigned to this work.

#### **5. AMENDMENTS**

MTC reserves the right to request changes in the services to be performed by CONTRACTOR. All such changes shall be incorporated in written amendments that specify the changes in work performed and any adjustments in compensation and schedule. All amendments shall be executed by the Executive Director or a designated representative and CONTRACTOR and specifically identified as amendments to the Agreement. The MTC Project Manager is not a designated representative, for purposes of approving an amendment.

#### **6. TERMINATION**

A. Termination for Convenience. MTC may terminate this Agreement for convenience, in whole or in part, at any time by written notice to CONTRACTOR. Upon receipt of notice of termination, CONTRACTOR shall stop work under this Agreement immediately, to the extent

provided in the notice of termination, and shall promptly submit its termination claim to MTC. CONTRACTOR shall be reimbursed for costs incurred for incomplete deliverables up to the time of termination and a reasonable profit not to exceed 10%, plus reasonable termination costs, not to exceed the amount payable for such deliverables. If CONTRACTOR has any property in its possession belonging to MTC, CONTRACTOR will account for the same, and dispose of it in the manner MTC directs. Except as provided above, MTC shall not in any manner be liable for CONTRACTOR's actual or projected lost profits had CONTRACTOR completed the services required by this Agreement.

B. Termination for Default. If CONTRACTOR does not deliver the work products specified in this Agreement in accordance with the delivery schedule or fails to perform in the manner called for in the Agreement, or if CONTRACTOR fails to comply with any other material provision of the Agreement, MTC may terminate this Agreement for default. Termination shall be effected by serving a fifteen (15) day advance written notice of termination on CONTRACTOR, setting forth the manner in which CONTRACTOR is in default. If CONTRACTOR does not cure the breach or describe to MTC's satisfaction a plan for curing the breach within the fifteen (15) day period, MTC may terminate the Agreement for default. In the event of such termination for default, CONTRACTOR will be entitled to be reimbursed only for work performed in full compliance with the contract requirements as follows: CONTRACTOR shall be reimbursed for costs incurred for incomplete deliverables up to the time of termination, not to exceed the amount payable for such deliverables. Such reimbursement will be offset by any costs incurred by MTC to complete work required under the Agreement. In no event shall MTC be required to reimburse CONTRACTOR for any costs incurred for work causing or contributing to the default. If CONTRACTOR has any property in its possession belonging to MTC, CONTRACTOR will account for the same, and dispose of it in the manner MTC directs. MTC shall not in any manner be liable for CONTRACTOR's actual or projected lost profits had CONTRACTOR completed the services required by this Agreement.

C. If it is determined by MTC that CONTRACTOR's failure to perform resulted from unforeseeable causes beyond the control of CONTRACTOR, such as a strike, fire, flood, earthquake or other event that is not the fault of, or is beyond the control of CONTRACTOR, MTC, after setting up a new delivery or performance schedule, may allow CONTRACTOR to continue work, or treat the termination as a termination for convenience.

## **7. INSURANCE AND FINANCIAL SECURITY REQUIREMENTS**

CONTRACTOR shall, at its own expense, obtain and maintain in effect at all times for the duration of this Agreement the types of insurance and financial security listed in Attachment E, Insurance and Financial Security (Bond) Provisions, attached hereto and incorporated herein,

against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement. All insurance must be placed with insurers with a Best's rating of A-VIII or better.

## **8. INDEPENDENT CONTRACTOR**

CONTRACTOR is an independent contractor and not an employee or agent of MTC and has no authority to contract or enter into any agreement in the name of MTC. CONTRACTOR has, and hereby retains, full control over the employment, direction, compensation and discharge of all persons employed by CONTRACTOR who are assisting in the performance of services under this Agreement. CONTRACTOR shall be fully responsible for all matters relating to the payment of its employees, including compliance with social security, withholding tax and all other laws and regulations governing such matters. CONTRACTOR shall be responsible for its own acts and those of its agents and employees during the term of this Agreement.

## **9. INDEMNIFICATION**

To the maximum extent permitted by law, CONTRACTOR shall indemnify, keep and hold harmless MTC and those entities (if any) identified as additional insureds in Attachment E, Insurance and Financial Security (Bond) Provisions, and their commissioners, directors, officers, agents, and employees ("MTC Indemnified Parties") against any and all demands, claims, suits or actions arising out of any of the following:

- A. Any injury or death to persons or property or pecuniary, financial or economic losses that may occur, or that may be alleged to have occurred, caused by any breach of the Agreement or negligent act or omission or willful misconduct of CONTRACTOR or its officers, employees, subcontractors or agents or any of them, arising from, under or in connection with this Agreement; or
- B. Any allegation that materials or services provided by CONTRACTOR under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.

CONTRACTOR further agrees to defend any and all such claims, actions, suits or other legal proceedings and pay all charges of attorneys and all other costs and expenses of defenses as they are incurred. If any judgment is rendered against any of the MTC Indemnified Parties, CONTRACTOR shall, at its expense, satisfy and discharge the same.

The provisions set forth in this Article are intended to be applied to the fullest extent allowed under the law and, if any portion of it is found to be void or unenforceable, the remainder is to be severable and enforceable. This indemnification shall survive termination or expiration of this Agreement.

## **10. DATA TO BE FURNISHED BY MTC**

All data, reports, surveys, studies, drawings, software (object or source code), electronic databases, and any other information, documents or materials (“MTC Data”) made available to CONTRACTOR by MTC for use by CONTRACTOR in the performance of its services under this Agreement shall remain the property of MTC and shall be returned to MTC at the completion or termination of this Agreement. No license to such MTC Data, outside of the Scope of Work of the Project, is conferred or implied by CONTRACTOR’s use or possession of such MTC Data. Any updates, revisions, additions or enhancements to such MTC Data made by CONTRACTOR in the context of the Project shall be the property of MTC and subject to the provisions of Article 11.

### **10.1 PERSONALLY IDENTIFIABLE INFORMATION**

CONTRACTOR agrees to comply with the special provisions related to the access and protection of personally identifiable information set forth in Attachment F, Special Conditions Regarding Personally Identifiable Information, attached hereto and incorporated herein by this reference.

### **10.2 NONDISCLOSURE OF CONFIDENTIAL INFORMATION**

MTC may be required to make available to CONTRACTOR certain confidential, non-public or proprietary information (“Confidential Information”) for purposes of carrying out the Project. Confidential Information may be tangible, intangible, visual, oral, written, and/or electronic information, present or future, and includes: (i) proprietary information learned through inspection of drawings, specifications or equipment; (ii) descriptions of proprietary processes, designs, functionality or know-how; (iii) proprietary software, programming data, code or information; and (iv) other information disclosed in writing and marked as “Confidential” or with a similar notice. As between MTC and CONTRACTOR, Confidential Information shall remain the sole and exclusive property of MTC, and no license or other rights to Confidential Information or any works deriving from Confidential Information is granted or implied hereby. Confidential Information does not include information that: a) is now or subsequently becomes generally available to the public through no fault of CONTRACTOR; b) CONTRACTOR can demonstrate to have had rightfully in its possession prior to disclosure by MTC or its contractors, Vendors or licensors; c) CONTRACTOR rightfully obtains from a third party who has the right to transfer or disclose it; or (d) is required to be disclosed by law or applicable legal process.

CONTRACTOR agrees to take all necessary and reasonable precautions to maintain the confidentiality of Confidential Information and agrees not to use, copy, distribute or disclose such Confidential Information except for the business purpose underlying this Agreement, except as authorized in writing by MTC. CONTRACTOR further agrees to disclose Confidential

Information only to its directors, officers, employees and Contractors who need to know such information, and who have agreed to be bound by the terms and conditions of this Agreement. Promptly upon the request of MTC, at any time and for any reason, CONTRACTOR shall destroy or return to MTC, at MTC's option, all documents, computer files and other tangible materials that contain Confidential Information. These obligations survive the termination of this Agreement, unless otherwise agreed in writing by MTC.

## **11. OWNERSHIP OF WORK PRODUCTS**

All drawings, designs, specifications, manuals, reports, studies, surveys, models, software, source code and source code documentation, documentation or system architecture and any other documents, materials, data and products ("Work Products") prepared or assembled and furnished to MTC by CONTRACTOR or its subContractors pursuant to this Agreement shall be and are the property of MTC. MTC shall be entitled to copies and access to these materials during the progress of the work. Any such materials remaining in the hands of CONTRACTOR or in the hands of any subContractor upon completion or termination of the work shall be immediately delivered to MTC. CONTRACTOR hereby assigns to MTC ownership of any and all rights, title and interest in and to such Work Products, including ownership of any copyright, patent, trademark, trade secret, or other intellectual property or proprietary rights in the Work Product. CONTRACTOR also agrees to execute all papers necessary for MTC to perfect its ownership of the rights in the Work Product. Notwithstanding the above, "Work Products" are not intended nor shall they be construed to include CONTRACTOR'S pre-existing intellectual property secured, developed, written, or produced by CONTRACTOR prior to the execution of this Agreement or developed concurrently with this Agreement but not specifically for this Agreement; CONTRACTOR shall retain all right, title and interest in any such pre-existing intellectual property.

CONTRACTOR shall be responsible for the preservation of any and all such Work Products prior to transmittal to MTC, and CONTRACTOR shall replace any such Work Products as are lost, destroyed, or damaged while in its possession without additional cost to MTC.

CONTRACTOR represents and warrants that all materials prepared under this Agreement are original or developed from materials in the public domain (or both) and that all materials prepared under and services provided under this Agreement do not infringe or violate any copyright, trademark, patent, trade secret, or other intellectual-property or proprietary right of any third party.

## **12. SUBCONTRACTS**

A. No subcontractors are currently approved by MTC for work under this Agreement. In advance of the assignment of any work to a subcontractor, such subcontractor must be approved

in writing by the MTC Project Manager and engaged under written contract with CONTRACTOR with provisions allowing CONTRACTOR to comply with all requirements of this Agreement, including without limitation Article 11, OWNERSHIP OF WORK PRODUCTS. Failure of a subcontractor to provide insurance in accordance with Article 7, INSURANCE REQUIREMENTS, shall be at the risk of CONTRACTOR.

B. Nothing contained in this Agreement or otherwise, shall create any contractual relation between MTC and any subcontractors, and no subcontract shall relieve CONTRACTOR of his/her responsibilities and obligations hereunder. CONTRACTOR agrees to be as fully responsible to MTC for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONTRACTOR. CONTRACTOR's obligation to pay its subcontractors is an independent obligation from MTC's obligation to make payments to CONTRACTOR.

C. Applicable provisions of this Agreement shall be included in any subcontract or subcontractor agreement in excess of \$25,000 entered into under of this Agreement.

### **13. ASSIGNMENT OF AGREEMENT**

CONTRACTOR shall not assign this Agreement, or any part hereof without prior express written consent of the MTC Project Manager or a designated representative, and any attempt thereat shall be void and unenforceable. MTC may freely assign all or a portion of this Agreement to the Bay Area Headquarters Authority.

### **14. RECORDS**

CONTRACTOR agrees to establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) that is adequate to accumulate and segregate reasonable, allowable, and allocable project costs. CONTRACTOR further agrees to keep all records pertaining to the project being funded for audit purposes for a minimum of four (4) years following the fiscal year of last expenditure under the Agreement; or until completion of any litigation, claim or audit, whichever is longer.

#### **14.1. RECORDS OF SALES; FRAUD PREVENTION**

CONTRACTOR shall provide each customer with a receipt from CONTRACTOR's electronic cash register for the value of each sales transaction and shall retain a copy of this receipt for its records for a period of one year from the date of each transaction.

CONTRACTOR shall exercise its best efforts to ensure that no fraud or theft is committed against MTC or the programs supported by the Project through CONTRACTOR's sales, and if any fraud or theft is discovered, including any transactions with credit cards or checks that do not clear or are discovered to be fraudulent, to promptly report it to MTC or, if such transactions are

made pursuant to a separate agreement between CONTRACTOR and the Clipper®, FasTrak®, Bay Area Bike Share or similar vendor, the appropriate vendor. The Merchant shall fully cooperate in the investigation and prosecution of any theft or fraud found in CONTRACTOR's sales at the Project.

CONTRACTOR agrees that the money collected on behalf of MTC belongs to MTC, money collected on behalf of another Agency (as defined in Attachment A, Scope of Work,) belongs to such Agency, and money collected on behalf of any Agency contractor belongs to such contractor, and CONTRACTOR cannot use any of that money.

MTC assumes no financial responsibility for any financial loss incurred by CONTRACTOR in the course of performing this Agreement. MTC's only financial obligations under this Agreement are those described in Article 3 and Attachment C of the Agreement. CONTRACTOR is solely and directly responsible to its suppliers and equipment lessors or sellers for payments due them, and MTC and the other Agencies shall have no obligation to them.

## **15. AUDITS**

CONTRACTOR shall permit MTC and MTC's authorized representatives to have access to CONTRACTOR's books, records, accounts, and any and all work products, materials, and other data relevant to this Agreement, for the purpose of making an audit, examination, excerpt and transcription during the term of this Agreement and for the applicable period specified in Article 14 or Article 14.1. CONTRACTOR shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, work products, materials and data for that period of time.

CONTRACTOR further agrees to include in all its subcontracts hereunder exceeding \$25,000 a provision to the effect that the subcontractor agrees that MTC or any of MTC's duly authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor for the term specified above.

## **16. NOTICES**

Except for invoices submitted by CONTRACTOR pursuant to Article 3, all notices or other communications to either party by the other shall be deemed given when made in writing and delivered, mailed, emailed, or faxed to such party at their respective addresses as follows:

To MTC:	Attention: Ursula Vogler Metropolitan Transportation Commission 101 - 8th Street Oakland, CA 94607-4700 Email: uvogler@mtc.ca.gov Fax: (510)817-5785
To CONTRACTOR:	Attention: TBD

TBD  
Address  
Email:  
Fax:

## **17. SOLICITATION OF CONTRACT**

CONTRACTOR warrants that it has not employed or retained any company or persons, other than a bona fide employee working solely for CONTRACTOR, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person other than bona fide employees working solely for CONTRACTOR, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of the Agreement. For breach or violation of this warranty, MTC shall have the right to terminate the Agreement without liability or, at its discretion, the right to deduct from CONTRACTOR's maximum payment the full amount of such fee, commission, percentage, brokerage fee, gift or contingent consideration.

## **18. PROHIBITED INTERESTS**

CONTRACTOR covenants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree or have the potential of conflicting with the performance of services required under the Agreement or the impartial rendering of assistance or advice to MTC. CONTRACTOR further covenants that in the performance of the Agreement no person having any such interest shall be employed.

No member, officer, employee or agent of MTC, during his/her tenure shall have any prohibited interest as defined by California Government Code Sections 1090, *et seq.* and 87100 *et seq.*, direct or indirect, in the Agreement or the proceeds thereof. Prohibited interests include interests of immediate family members, domestic partners, and their employers or prospective employers. Accordingly, CONTRACTOR further covenants that it has made a complete disclosure to MTC of all facts of which CONTRACTOR is aware upon due inquiry bearing upon any possible interest, direct or indirect, that it believes any member, officer, agent or employee of MTC (or an immediate family member, domestic partner or employer or prospective employer of such member, officer, agent or employee) presently has, or will have in the Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute grounds for cancellation and termination hereof by MTC.

### **18.1 ORGANIZATIONAL CONFLICTS OF INTEREST**

CONTRACTOR shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under this Agreement. An organizational conflict of interest occurs when, due to other activities,

relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to MTC; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other Agreement.

CONTRACTOR shall not engage the services of any subContractor or independent contractor on any work related to this Agreement if the subContractor or independent contractor, or any employee of the subContractor or independent contractor, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Agreement.

If at any time during the term of this Agreement CONTRACTOR becomes aware of an organizational conflict of interest in connection with the work performed hereunder, CONTRACTOR shall immediately provide MTC with written notice of the facts and circumstances giving rise to this organizational conflict of interest. CONTRACTOR's written notice will also propose alternatives for addressing or eliminating the organizational conflict of interest. If at any time during the period of performance of this Agreement, MTC becomes aware of an organizational conflict of interest in connection with CONTRACTOR's performance of the work hereunder, MTC shall similarly notify CONTRACTOR. In the event a conflict is presented, whether disclosed by CONTRACTOR or discovered by MTC, MTC will consider the conflict presented and any alternatives proposed and meet with CONTRACTOR to determine an appropriate course of action. MTC's determination as to the manner in which to address the conflict shall be final.

Failure to comply with this section may subject CONTRACTOR to damages incurred by MTC in addressing organizational conflicts that arise out of work performed by CONTRACTOR, or to termination of this Agreement for breach.

## **19. LAWS AND REGULATIONS**

CONTRACTOR shall comply with any and all applicable laws, statutes, ordinances, rules, regulations, and procedural requirements of any national, state, or local government, and of any agency of any such government, including but not limited to MTC, that relate to or in any manner affect the performance of the Agreement. Those laws, statutes, ordinances, rules, regulations and procedural requirements that are imposed on MTC as a recipient of federal or state funds are hereby in turn imposed on CONTRACTOR.

### **19.1 NONDISCRIMINATION**

CONTRACTOR shall provide service to customers as specified in Attachment A, Scope of Work, without regard to, and shall not discriminate based on, a customer's race, religious creed, color, national origin, age, physical disability, or sex.

## **20. CLAIMS OR DISPUTES**

CONTRACTOR shall be solely responsible for providing timely written notice to MTC of any claims for additional compensation and/or time in accordance with the provisions of the Agreement. It is MTC's intent to investigate and attempt to resolve any CONTRACTOR claims before CONTRACTOR has performed any disputed work. Therefore, CONTRACTOR's failure to provide timely notice shall constitute a waiver of CONTRACTOR's claims for additional compensation and/or time.

CONTRACTOR shall not be entitled to the payment of any additional compensation for any cause, including any act, or failure to act, by MTC, or the failure or refusal to issue a modification, or the happening of any event, thing, or occurrence, unless it has given MTC due written notice of a potential claim. The potential claim shall set forth the reasons for which CONTRACTOR believes additional compensation may be due, the nature of the costs involved, and the amount of the potential claim.

Such notice shall be given to MTC prior to the time that CONTRACTOR has started performance of the work giving rise to the potential claim for additional compensation.

If there is a dispute over any claim, CONTRACTOR shall continue to work during the dispute resolution process in a diligent and timely manner as directed by MTC, and shall be governed by all applicable provisions of the Agreement. CONTRACTOR shall maintain cost records of all work that is the basis of any dispute.

If an agreement can be reached that resolves CONTRACTOR's claim, the parties will execute an Agreement modification to document the resolution of the claim. If the parties cannot reach an agreement with respect to CONTRACTOR's claim, they may choose to pursue dispute resolution pursuant to Article 24, DISPUTE RESOLUTION, or MTC may terminate the Agreement.

## **21. REMEDIES FOR BREACH**

In the event CONTRACTOR fails to comply with the requirements of the Agreement in any way, MTC reserves the right to implement administrative remedies that may include, but are not limited to, withholding of progress payments and contract retentions, and termination of the Agreement in whole or in part.

The duties and obligations imposed by the Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by MTC or CONTRACTOR shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## **22. TEMPORARY SUSPENSION OF WORK**

MTC, in its sole discretion, reserves the right to stop or suspend all or any portion of the work for such period as MTC may deem necessary. The suspension may be due to the failure on the part of CONTRACTOR to carry out orders given or to perform any provision of the Agreement or to factors that are not the responsibility of CONTRACTOR. CONTRACTOR shall comply immediately with the written order of MTC to suspend the work wholly or in part. The suspended work shall be resumed when CONTRACTOR is provided with written direction from MTC to resume the work.

If the suspension is due to CONTRACTOR's failure to perform work or carry out its responsibilities in accordance with this Agreement, or other action or omission on the part of CONTRACTOR, all costs shall be at CONTRACTOR's expense and no schedule extensions will be provided by MTC.

In the event of a suspension of the work, CONTRACTOR shall not be relieved of CONTRACTOR's responsibilities under this Agreement, except the obligations to perform the work that MTC has specifically directed CONTRACTOR to suspend under this section.

If the suspension is not the responsibility of CONTRACTOR, suspension of all or any portion of the work under this Section may entitle CONTRACTOR to compensation and/or schedule extensions subject to the Agreement requirements.

## **23. WARRANTY OF SERVICES**

A. In the performance of its services, CONTRACTOR represents and warrants that it has and will exercise the degree of professional care, skill, efficiency, and judgment of Contractors with special expertise in providing such services, and that it carries and will maintain all applicable licenses, certificates, and registrations needed for the work in current and good standing.

B. In the event that any services provided by CONTRACTOR hereunder are deficient because of CONTRACTOR's or a subContractor's failure to perform said services in accordance with the warranty standards set forth above, MTC shall report such deficiencies in writing to CONTRACTOR within a reasonable time. MTC thereafter shall have:

1. The right to have CONTRACTOR re-perform such services at CONTRACTOR's expense; or
2. The right to have such services done by others and the costs thereof charged to and collected from CONTRACTOR if within 30 days after written notice to CONTRACTOR requiring such re-performance, CONTRACTOR fails to give satisfactory evidence to MTC that it has undertaken said re-performance; or
3. The right to terminate the Agreement for default.

CONTRACTOR shall be responsible for all errors and omissions and is expected to pay for all deficient work as a result of errors and omissions.

## **24. DISPUTE RESOLUTION**

A. Informal Resolution of Disputes. CONTRACTOR and MTC shall use good faith efforts to resolve all disputes informally at the project manager level. In the event such efforts are unsuccessful, either party may request that MTC provide a written determination as to the proposed resolution of the dispute. Within twenty-one (21) calendar days of the request, the MTC Project Manager shall provide a written determination as to the dispute, including the basis for his or her decision. Upon CONTRACTOR's written acceptance of the MTC Project Manager's determination, the Agreement may be modified and the determination implemented or, failing agreement, MTC may in its sole discretion pay such amounts and/or revise the time for performance in accordance with the MTC Project Manager's determination.

If the MTC Project Manager's determination is not accepted by CONTRACTOR, the matter shall promptly be referred to senior executives of the parties having designated authority to settle the dispute. The senior executives will exchange memoranda stating the issues in dispute and their respective positions and then meet for negotiations at a mutually agreed time and place. If the matter has not been resolved within thirty (30) calendar days of commencement of senior management negotiations, the parties may mutually agree to try to settle the dispute by means of alternate dispute resolution methodologies, as set forth below.

B. Controversies Subject to Alternative Dispute Resolution. Any claim or controversy concerning the interpretation, application, or implementation of this Agreement between MTC and CONTRACTOR that cannot be resolved through the informal efforts described above, may, by specific agreement of the parties, be submitted to alternative dispute resolution (that is, mediation or arbitration) with the parameters for such dispute resolution being agreed to by the parties at the time.

C. Other Remedies. If a dispute is not resolved through discussion or the parties do not agree to alternative dispute resolution, either party may pursue available legal remedies in a California State or Federal court of competent jurisdiction. CONTRACTOR must file a government claim pursuant to Government Code section 910 *et seq.* in order to initiate a civil action.

D. Pending Resolution. CONTRACTOR shall continue to work during the dispute resolution process in a diligent and timely manner as directed by MTC, and shall be governed by all applicable provisions of the Agreement.

E. Cost of Alternative Dispute Resolution Proceedings. Each party shall bear the costs and expenses incurred by it in connection with such alternative dispute resolution processes. The cost of any mediator or independent decision maker shall be shared equally between the parties.

F. Survival of this Article. This Article shall survive completion or termination of this Agreement, but under no circumstances shall either party call for an alternative dispute resolution of any claim or dispute arising out of this Agreement after such period of time as would normally bar the initiation of legal proceeding to litigate such claim or dispute under the laws of the State of California.

## **25. CHOICE OF LAW**

All questions pertaining to the validity and interpretation of the Agreement shall be determined in accordance with the laws of the State of California applicable to agreements made and to be performed within the State.

## **26. ATTORNEYS' FEES**

If any legal proceeding should be instituted by either of the parties to enforce the terms of this Agreement or to determine the rights of the parties under this Agreement, the prevailing party in said proceeding shall recover reasonable attorneys' fees, in addition to all court costs.

## **27. PARTIAL INVALIDITY**

If any term or condition of this Agreement is found to be illegal or unenforceable, such term or condition shall be deemed stricken and the remaining terms and conditions shall remain valid and in full force and effect.

## **28. BENEFIT OF AGREEMENT**

The Agreement shall bind and benefit the parties hereto and their heirs, successors, and permitted assigns.

## **29. NO THIRD PARTY BENEFICIARIES**

This Agreement is not for the benefit of any person or entity other than the parties.

## **30. ENTIRE AGREEMENT; MODIFICATION**

This Agreement, including any attachments, constitutes the complete agreement between the parties and supersedes any prior written or oral communications. CONTRACTOR represents that in entering into the Agreement it has not relied on any previous representations, inducements, or understandings of any kind or nature. This Agreement may be modified or amended only by written instrument signed by both CONTRACTOR and MTC. In the event of a

conflict between the terms and conditions of this Agreement and the attachments, the terms of this Agreement will prevail.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the day and year first written above.

METROPOLITAN TRANSPORTATION  
COMMISSION

TBD

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Steve Heminger, Executive Director

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TBD

## **ATTACHMENT A SCOPE OF WORK**

The purpose of the Regional Resource Center is to provide visitors at 375 Beale Street with information and products related to the agencies that will be located at 375 Beale Street, including the Association of Bay Area Governments (ABAG), the Bay Area Air Quality Management District (Air District), the Bay Area Toll Authority (BATA), the Bay Area Infrastructure Financing Authority (BAIFA) and the Metropolitan Transportation Commission (MTC, and, together with ABAG, Air District, BATA, BAHA, and BAIFA, the “Agencies”). These services include: Bay Area public transportation services, especially assistance with and purchase of BATA- and MTC-managed projects (e.g., FasTrak<sup>®</sup>, Clipper<sup>®</sup>, etc.), information on transportation alternatives and transit connections, including one-on-one travel training, assistance with applications for Air District permits, and providing information on ABAG projects and programs, among other functions.

The Scope of Work for this project consists of three tasks:

- 4) Set-up/Planning/Design
- 5) Operations of one Regional Resource Center location, at 375 Beale Street in San Francisco (Center)
- 6) Contract management

### **TASK I: SET-UP/PLANNING/DESIGN**

In conjunction with the MTC Project Manager, Contractor will develop the following work products in preparation for the opening of the Regional Resource Center:

3. Staffing and plan and schedule: this shall include development of appropriate staffing levels during open hours, including both pre- and post-open shifts. Staffing plan/schedule shall identify specific staff members (with a minimum of at least one staff member available at all times) for each shift. Equipment shall include a list of equipment to be procured by Contractor.
4. Training plan: this shall outline reference information and operational knowledge needed to perform all job necessary job duties, including:
  - BATA, BAIFA or MTC managed projects, including FasTrak<sup>®</sup>, Clipper<sup>®</sup>, Bay Area Bike Share, and Bay Area Express Lanes, among others;
  - Bay Area transportation network, especially transit properties and programs in and around San Francisco;
  - Air District programs, including permits, Spare the Air program, among others;
  - ABAG programs including Bay Trail, Bay REN, Resiliency program, estuary program, Green Business Program, among others;
  - Locational and general business information for 375 Beale Street, in order to guide and assist visitors at 375 Beale Street;
  - Knowledge of how to access local/regional information on the Internet; and
  - Basic standards of customer service expected for the successful completion of the work tasks.

*Deliverables 1.0:*

*1a) Staffing Plan and Schedule*

*1b) Training Plan*

**TASK II: OPERATIONS**

Contractor will provide Bay Area transportation, transit and other related information and information about the Agencies and their programs to the public at the Center.

Contractor will maintain all operational aspects of the Center, including, but not limited to the following:

- Greet, provide directional information and answer general questions made by visitors to the Center;
- Refer visitors to information on then-current Agency projects and programs;
- Provide Bay Area transportation information via online sources, including 511.org and other web properties, as appropriate. Printed material may be provided, although electronic information is preferred;
- Provide customer service for Agency-managed products including, but not limited to: FasTrak<sup>®</sup>, Clipper<sup>®</sup> and Bay Area Bike Share. This includes:
  - Vend Clipper<sup>®</sup> cards and add value or transit products to cards. Contractor will enter into appropriate retailer agreement;
  - Vend FasTrak<sup>®</sup> toll tags, add value to toll tags and accept payment for toll violations. Contractor will enter into appropriate retailer agreement(s); and
  - Sell Bay Area Bike Share cash memberships to qualified low income residents;
- Direct customers to appropriate locations if/when an issue arises that Center staff cannot resolve:
  - FasTrak<sup>®</sup> issues will be resolved at 375 Beale, within the FasTrak<sup>®</sup> Customer Service Center;
  - Clipper<sup>®</sup> card configuration and customer service issues may be resolved by referring customers to Clipper<sup>®</sup> Customer Service or referring to in-person resources, as appropriate; and
  - Bay Area Bike Share customer service issues will be resolved at a location to be determined;
- Provide customer consultation services on transportation alternatives in the Bay Area. This will require providing or training staff who have an extensive knowledge of the Bay Area's transportation network and alternatives, and includes:
  - Providing point-to-point recommendations for alternatives to driving alone. This could include assisting people facing transportation challenges: youth, persons with disabilities, older adults, persons with limited incomes, etc.;

- Providing transportation resource information, including: 511, 311, Bay Area's Mobility Management Center information, among others;
- Providing regular feedback to MTC PM on recurring or common themes identified in serving such customers and strategies deployed to assist such customers and assisting MTC PM with documenting information;
- Reporting to MTC any malfunction of electronic 511 Real Time departure time information via electronic displays in the Center;
- Sell Bay Area Bike Share discount program memberships. Parameters for qualification of the discount membership including verification of eligibility of discount criteria (e.g., Muni Lifeline Pass, PG&E CARE enrollment verification, etc.);
- Sell promotional items to the public, but only to the extent required by MTC and at prices approved by MTC;
- Successfully operate and maintain all aspects of operations including computers, cash handling, telephone line, and Internet access;
- Operate MTC-provided computers/interactive kiosks with Internet access during all hours of operation. Report broken computers/interactive kiosks or Internet downtime to MTC, as needed;
- Procure, provide and maintain cash register, equipment necessary to secure cash onsite and other electronic equipment that will assist customers to pay cash, Visa or MasterCard (including chip cards) for products;
- Accept cash, Visa, or MasterCard (including chip cards) for all payments and provide customer with a receipt;
- Accept transit benefit cards for transit fare payment;
- Maintain the Center, related signage and electronic displays;
- Keep a clean and orderly work space, with all workspaces clean and free of clutter; and
- Ensure Center personnel are courteous and helpful to all customers.

The Center will be open for services, at a minimum, from 7:00 am to 6:00 p.m., Monday through Friday and from 9 a.m. to 2 p.m. on Saturdays, except for the following three holidays:

- New Year's Day
- Thanksgiving Day
- Christmas Day

Contractor must meet the following sub-tasks and stipulations, listed below.

#### A) Staffing

Contractor will be responsible for the staffing of the Center. Contractor will:

- Provide at least one employee at all times during open business hours to answer transportation-related questions and sell products. More staff may be needed during times when customer volume is known to increase;

- Hire part-time trainee staff via Launchpath or another MTC-approved employee training program (Program), which is expected to be sponsored by or in partnership with a community college or other public or non-profit entity. Contractor will provide Program staff with hands-on experience in customer service and transportation logistics, among other functions. Employees hired via Program are expected to have a limited duration of employment, but could be considered for continuation of employment, if appropriate. Contractor is expected to have at least one Program employee during each academic semester unless otherwise approved by the MTC Project Manager;
- Coordinate all staffing logistics, including maintenance of a staffing plan and schedule;
- Provide employees who are neat, clean and appropriately dressed at all times, and ensure that said personnel will conduct themselves in an appropriate manner; and
- Ensure that employees proactively and politely greet and serve all customers.

#### B) Training

Contractor will be responsible for training of all new and existing staff. Contractor will:

- Conduct staff training in accordance with the training plan prior to staff's start date. Contractor will work with pre-identified MTC staff on transportation projects and programs and related information;
- Conduct ongoing training to staff in accordance with the training plan;
- Provide adequate transportation reference information (for electronic referral). Information will be available to staff at all times and will include exhaustive information on all modes available in the Bay Area;
- Ensure that all staff are knowledgeable about Bay Area transportation systems and about the Agencies regional projects and programs; and
- Ensure that staff are trained on the sale of Clipper<sup>®</sup> cards, value and transit products, FasTrak<sup>®</sup> toll tags, value and violations payments; Bay Area Bike Share discount membership,; and Air District permitting; among other topics, as appropriate;

#### C) Information Dissemination

The Center will distribute/display several types of information in printed and digital formats. All materials on display, all content shown on the display panels and computer screens, and all signage used at the Center, etc., must be reviewed and approved by the MTC Project Manager prior to being displayed at the Center location.

##### 4) In-person Information

Contractor is responsible to provide in-person information to members of the public. This information includes:

- General information about the Agencies and the 375 Beale location, including directional/locational and Agency contact information;
- Bay Area trip planning options, including various Bay Area routes and modes; and
- Basic information for programs managed Agencies. These include questions related to FasTrak<sup>®</sup>, Clipper<sup>®</sup>, and Bay Area Bike Share, among others.

##### 5) Digital Information

Contractor is responsible to maintain and display MTC-provided flat panel screens, computers and kiosk terminals, at the Center. Contractor shall:

- Ensure that all flat panel screens, computers and terminals are in working order during business hours;
- Provide up-to-date transportation information and promotional messages/transportation videos on the panels;
- Operate computers/kiosk terminals that have functions related to Agencies' programs;
- Ensure dissemination of 511 Real Time Transit program information and other related departure time information to be shown at Center.

#### 6) Printed Materials

Contractor shall pick-up, store, display and distribute, general information/collateral of programs related to the Agencies. This includes any information/collateral to support programs highlighted at the Center. Contractor will also:

- Ensure that Center is stocked with current printed materials at all times with a focus on providing customers with relevant, regional information/collateral; and
- Display and distribute Clipper<sup>®</sup>, FasTrak<sup>®</sup> and Bay Area Bike Share (among other Agency projects or programs) information to customers during all hours of operation. Ensure that Center is stocked with this information at all times.

#### D) Sell Clipper<sup>®</sup>, FasTrak<sup>®</sup>, Bay Area Bike Share and Promotional Items

Contractor will be responsible for selling and adding value or products to Clipper<sup>®</sup> cards and FasTrak<sup>®</sup> toll tags and accepting payment for FasTrak<sup>®</sup> violations. The Contractor must accept cash or Visa and MasterCard credit cards (including chip cards) and transit benefit cards as a form of payment for transactions. Any credit card fees charged to the Contractor will be paid for by the Contractor. Contractor will be required to negotiate and enter into any agreements necessary or appropriate to complete this task. Contractor will be capable of tracking sales on behalf of various programs and settling accounts weekly with MTC, ABAG, and Air District as well as meeting settlement requirements of Clipper<sup>®</sup>, FasTrak<sup>®</sup>, and Bay Area Bike Share which may include giving third parties access and permission to make daily debits from a bank account equal to daily sales. Except as permitted under direct agreements between Contractor and third parties relating to the Clipper<sup>®</sup>, FasTrak<sup>®</sup> and Bay Area Bike Share programs, Contractor shall not mark up or earn any commission or profit on such sales. Contract will only sell items as directed by MTC.

Specifically Contractor will sell/vend the following:

#### 1) Clipper<sup>®</sup>

The Center will serve as the main in-station distribution points for Clipper<sup>®</sup> cards, value and products. Contractor will:

- Vend Clipper<sup>®</sup> cards, value and products to the public;
- Provide the public with Clipper<sup>®</sup>- specific information. Answer in-person questions about the card and its use; and
- The Center may house and operate a Translink Retail Unit or a Ticket Office Terminal, which, in addition to the ability to add value or products to Clipper<sup>®</sup> cards, allows staff to register cards and issue Youth and Senior cards.

2) FasTrak®

- Vend FasTrak® toll tags.
- Add value to FasTrak® toll tags and accept payment of FasTrak® violations via a kiosk provided by Blackstone Merchant Services (Blackstone). Contractor will enter into agreement with Blackstone for this service.
- The Contractor may be requested to provide additional FasTrak® services at a later date subject to a duly-executed agreement amendment.

4) Bay Area Bike Share

- Sell Bay Area Bike Share discount memberships to qualified customers. Staff will verify qualifications of potential discount customers.

E) Distribute transportation-related promotional items as directed and approved by MTC

Examples of items for distribution include:

- Bicycle helmets
- Bicycle gear
- T-shirts
- Mugs, pens and other memorabilia
- Other items (upon approval of MTC Project Manager)

F) Bay Area Air Quality Management District Permits

Contractor will facilitate customer use of a self-service computer terminal at the Center for transactions relating to permits issues by Air District and accept payment for those transactions. Contractor will refer the customer to Air District staff for assistance, as appropriate.

**TASK III: CONTRACT MANAGEMENT**

Contractor will:

- Meet with the MTC Project Manager on a quarterly basis, or more frequently, as required, to address any concerns/complaints, review signage and display logistics, collateral inventory and any other issue MTC deems necessary; and
- Prepare quarterly reports evaluating the success of the Center in collaboration with the MTC Project Manager. This evaluation will be based on number of customers helped (including the number of customers provided with transportation consultation), the number of FasTrak® toll tags/Clipper® cards/Bay Area Bike Share discount memberships sold, and other measures to be mutually determined. The MTC Project Manager will use quarterly reports to create a final evaluation in conjunction with Contractor.

*Deliverable 2.0:*

*2a) Quarterly report outlining detailed information on collateral distributed, number of customers helped, FasTrak<sup>®</sup> toll tags/Clipper<sup>®</sup> cards/Bay Area Bike Share discount memberships sold, and other measures to be mutually determined.*

**ATTACHMENT B**  
*Project Schedule*

<u>Task #</u>	<u>Work to be Performed/Deliverables</u>	<u>Completion Date</u>
1.	Set-Up, Planning, Design	June 30, 2018
2.	Operations of Regional Resource Center at 375 Beale Street, with Deliverables as described in Attachment A	June 30, 2018
3.	Contract Management, with Deliverables as described in Attachment A	June 30, 2018

**ATTACHMENT C**  
**Compensation and Method of Payment**

A. Compensation. CONTRACTOR shall be paid, as full compensation for the satisfactory completion of the work described in Attachment A, Scope of Work, the firm fixed sum of \_\_\_\_\_ (\$\_\_\_\_\_), which includes all labor, supervision, applicable surcharges such as taxes, insurance, and fringe benefits, as well as indirect costs, overhead and profit allowance, subcontractors' costs, travel, equipment, materials and supplies. Any amendments to this Agreement shall be based on the hourly rates set forth in Attachment D, Key Personnel Assignments, attached hereto and incorporated herein by this reference. In no event shall the total compensation to be paid CONTRACTOR under the Agreement exceed the Maximum Payment specified in Article 3 of the Agreement.

B. Progress Payments. Payment for CONTRACTOR's services shall be due in the amounts indicated below, upon acceptance by the MTC Project Manager of the following deliverables or milestones, described in detail in Attachment A, Scope of Work:

Task	<u>Deliverables (#)</u>	<u>Amount Due</u>
1, 2 & 3	Monthly Operations January 2016 – June 30, 2018 (30 months total)	\$_____/mo
	TOTAL	\$_____

C. Method of Payment. CONTRACTOR shall submit an invoice identifying the project deliverable or milestone for which payment is sought no later than thirty (30) days after MTC's acceptance of such deliverable/milestone. CONTRACTOR's final invoice must include the certification that all Personally Identifiable Information (PII) has been destroyed in accordance with Attachment F, Special Conditions Relating to Personally Identifiable Information.

**ATTACHMENT D**  
*Key Personnel Assignments*

	<u>Name</u>	<u>Rate/hour*</u>	<u>Est. hours</u>	<u>Task Description</u>
1.				
2.				
3.				

**ATTACHMENT E**  
**Insurance and Financial Security (Bond) Provisions**

1. INSURANCE

A. Minimum Coverages. The insurance requirements specified in this section shall cover CONTRACTOR's own liability and the liability arising out of work or services performed under this Agreement by any subcontractors, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations that CONTRACTOR authorizes to work under this Agreement (hereinafter referred to as "Agents.") CONTRACTOR shall, at its own expense, obtain and maintain in effect at all times during the life of this Agreement the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement.

CONTRACTOR is also required to assess the risks associated with work to be performed by Agents under subcontract and to include in every subcontract the requirement that the Agent maintain adequate insurance coverage with appropriate limits and endorsements to cover such risks. To the extent that an Agent does not procure and maintain such insurance coverage, CONTRACTOR shall be responsible for said coverage and assume any and all costs and expenses that may be incurred in securing said coverage or in fulfilling CONTRACTOR's indemnity obligation as to itself or any of its Agents in the absence of coverage.

In the event CONTRACTOR or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that CONTRACTOR's insurance be primary without right of contribution from MTC. Prior to beginning work under this contract, CONTRACTOR shall provide MTC with satisfactory evidence of compliance with the insurance requirements of this section.

1. Workers' Compensation Insurance with Statutory limits, and Employer's Liability Insurance with a limit of not less than \$1,000,000 per employee and \$1,000,000 per accident, and any and all other coverage of CONTRACTOR's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of MTC. Such Workers' Compensation & Employer's Liability may be waived, if and only for as long as CONTRACTOR is a sole proprietor or a corporation with stock 100% owned by officers with no employees.

2. Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the premises and operations, and products and completed operations of CONSULTANT and CONSULTANT's officers, agents, and employees and with limits of liability which shall not be less than \$1,000,000 combined single limit per occurrence with a general aggregate liability of not less than \$2,000,000, a products/completed operations aggregate liability limit of not less than \$2,000,000 and Personal & Advertising Injury liability with a limit of not less than \$1,000,000. Such policy shall contain a Waiver of Subrogation in favor of MTC.

Products and completed operations insurance shall be maintained for three (3) years following termination of this Agreement.

MTC and those entities listed in Part 3 of this Attachment E (if any), and their commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds for ongoing and completed operations. Such insurance shall be primary and non-contributory, and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from CONSULTANT's operations.

3. Business Automobile Insurance for all automobiles owned (if any), used or maintained by CONTRACTOR and CONTRACTOR's officers, agents and employees, including but not limited to owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per accident.

4. Umbrella Insurance in the amount of \$1,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.

5. Errors and Omissions Professional Liability Insurance for errors and omissions and the resulting damages, including, but not limited to, economic loss to MTC and having minimum limits of \$1,000,000 per claim. Such policy shall contain cyber risk coverages including network and internet security liability coverage, privacy liability coverage and media coverage.

The policy shall provide coverage for all work performed by CONTRACTOR and any work performed or conducted by any subcontractor/Contractor working for or performing services on behalf of CONTRACTOR. No contract or agreement between CONTRACTOR and any subcontractor/Contractor shall relieve CONTRACTOR of the responsibility for providing this Errors & Omissions or Professional Liability coverage for all work performed by CONTRACTOR and any subcontractor/Contractor working on behalf of CONTRACTOR on the project.

6. Property Insurance. Property Insurance covering CONTRACTOR'S own business personal property and equipment to be used in performance of this Agreement, property of others, including items sold and/or distributed by the RRC, materials or property to be purchased and/or installed on behalf of MTC (if any), and builders risk for property in the course of construction (if applicable). Coverage shall be written on a "Special Form" policy that includes theft, but excludes earthquake, with limits at least equal to the replacement cost of the property. This policy shall include a loss payee provision to cover other parties as their interest may appear. Such policy shall contain a Waiver of Subrogation in favor of MTC.

7. Employee Dishonesty/Crime Insurance. An Employee Dishonesty insurance policy covering CONTRACTOR's employees for loss of or damage to money, securities or other property resulting from theft, at limits of \$250,000. The policy should also include Money and Securities Inside the Premises insurance covering the money and securities against disappearance, theft and robbery, with a minimum limit of \$10,000. CONTRACTOR shall reimburse MTC for any and all losses within the deductible, for insured losses, the cost to prove the loss, accountants' fees, defense costs including attorneys' fees and any other fees associated with a claim. The policy shall contain a Joint Loss Payee naming MTC.

B. Acceptable Insurers. All policies will be issued by insurers acceptable to MTC, generally with a Best's Rating of A- or better with a Financial Size Category of VIII or better.

C. Self-Insurance. CONTRACTOR's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to MTC.

D. Deductibles and Retentions. CONTRACTOR shall be responsible for payment of any deductible or retention on CONTRACTOR's policies without right of contribution from MTC. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.

In the event that MTC seeks coverage as an additional insured under any CONTRACTOR insurance policy that contains a deductible or self-insured retention, CONTRACTOR shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act of CONTRACTOR, subcontractor, subcontractor, or any of their employees, officers or directors, even if CONTRACTOR or subcontractor is not a named defendant in the lawsuit.

E. Claims Made Coverage. If any insurance specified above is written on a "Claims-Made" (rather than an "occurrence") basis, then in addition to the coverage requirements above, CONTRACTOR shall:

- (1) Ensure that the Retroactive Date is shown on the policy, and such date

- must be before the date of this Agreement or the beginning of any work under this Agreement;
- (2) Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and
  - (3) If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, CONTRACTOR shall purchase “extended reporting” coverage for a minimum of three (3) years after completion of the work.

F. Failure to Maintain Insurance. All insurance specified above shall remain in force until all work or services to be performed are satisfactorily completed, all of CONTRACTOR’s personnel, subcontractors, subcontractors, and equipment have been removed from MTC’s property, and the work or services have been formally accepted. CONTRACTOR must notify MTC if any of the above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

G. Certificates of Insurance. Prior to commencement of any work hereunder, CONTRACTOR shall deliver to MTC Certificates of Insurance verifying the aforementioned coverages. Such certificates shall make reference to all provisions and endorsements referred to above and shall be signed on behalf of the insurer by an authorized representative thereof.

H. Disclaimer. The foregoing requirements as to the types and limits of insurance coverage to be maintained by CONTRACTOR are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by CONTRACTOR pursuant hereto, including, but not limited to, liability assumed pursuant to Article 9 of this Agreement.

2. NOT USED

3. ADDITIONAL INSUREDS

The following entities are to be named as Additional Insureds under applicable sections of this Attachment E and as MTC Indemnified Parties, pursuant to Article 9 of the Agreement.

**Association of Bay Area Governments**

**Bay Area Headquarters Authority**

**Bay Area Toll Authority**

**Bay Area Infrastructure Financing Authority**

**Bay Area Air Quality Management District**

## ATTACHMENT F

### *Special Conditions Relating to Personally Identifiable Information*

CONTRACTOR will have access to personally identifiable information (“PII”) in connection with the performance of the Agreement. PII is any information that is collected or maintained by MTC or CONTRACTOR that identifies or describes a person or can be directly linked to a specific individual. Examples of PII include name, address, email address, phone or fax number, signature, date of birth, Clipper<sup>®</sup>, FasTrak<sup>®</sup> or similar program account number, credit card information, bank account number, license plate number, means-tested benefit program status, utility billing details or travel pattern data. The following special conditions related to the confidentiality and use of PII apply to this Agreement:

#### 1. Right to Audit

CONTRACTOR shall permit MTC and its authorized representatives to audit and inspect: (i) CONTRACTOR’s facilities where PII is stored or maintained; (ii) any computerized systems used to share, disseminate or otherwise exchange PII; and (iii) CONTRACTOR’s security practices and procedures, data protection, business continuity and recovery facilities, resources, plans and procedures. The audit and inspection rights hereunder shall be for the purpose of verifying CONTRACTOR’s compliance with this Agreement, and all applicable laws.

#### 2. General Confidentiality of Data

All PII made available to or independently obtained by CONTRACTOR in connection with this Agreement shall be protected by CONTRACTOR from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to MTC. This includes, but is not limited to, the secure transport, transmission and storage of PII used or acquired in the performance of this Agreement.

CONTRACTOR agrees to properly secure and maintain any computer systems (hardware and software applications) or electronic media that it will use in the performance of this Agreement. This includes ensuring all security patches, upgrades, and anti-virus updates are applied as appropriate to secure PII that may be used, transmitted, or stored on such systems in the performance of this Agreement.

CONTRACTOR is prohibited from storing PII on portable media including, but not limited to, laptops, thumbdrives, disks and so forth.

Notwithstanding anything to the contrary in Article 14. Records, of this Agreement, CONTRACTOR agrees to retain PII for no longer than **thirty (30) days**. At the conclusion of this retention period, CONTRACTOR agrees to use Department of Defense (“DoD”) approved methods to permanently remove PII from any files. Discarded PII will be unavailable and unrecoverable following the purge on any storage media including, but not limited to, magnetic

disk, optical disk, and memory chips (“Storage Media”). CONTRACTOR agrees to destroy hard-copy documents containing PII by means of a cross-cut shredding machine. CONTRACTOR also agrees to use DoD approved methods to sanitize any Storage Media prior to discarding or when useful life has ended, whichever comes first. At the conclusion of the performance period of this Agreement, CONTRACTOR shall submit a certification to the MTC Project Manager as follows: “All PII whether in electronic or hard-copy format, has been destroyed in accordance with the requirements contained in Section 2. General Confidentiality of Data of Attachment F, Special Conditions Relating to Personally Identifiable Information.” These requirements shall survive termination or expiration of this Agreement.

### 3. Compliance with Statutes and Regulations

CONTRACTOR agrees to comply with the information handling and confidentiality requirements outlined in the California Information Practices Act (Civil Code sections 1798 *et seq.* and in California Streets and Highways Code Section 31490). In addition, CONTRACTOR warrants and certifies that in the performance of this Agreement, it will comply with all applicable statutes, rules, regulations and orders of the United States, the State of California and MTC relating to the handling and confidentiality of PII, including the terms and conditions contained in this Attachment F, Special Conditions Relating to Personally Identifiable Information and agrees to indemnify MTC against any loss, cost, damage or liability by reason of CONTRACTOR’s violation of this provision.

### 4. Subcontractors

MTC’s approval in writing is required prior to any disclosure by CONTRACTOR of PII to a subcontractor or prior to any work being done by a subcontractor that entails receipt of PII. Once approved, CONTRACTOR agrees to require such subcontractor to sign an agreement in substantially identical terms as this attachment, binding the subcontractor to comply with its provisions.

### 5. Contractor Guarantees

CONTRACTOR shall not, except as authorized or required by its duties by law, reveal or divulge to any person or entity any PII that becomes known to it during the term of this Agreement.

CONTRACTOR shall keep all PII entrusted to it completely secret and shall not use or attempt to use any such information in any manner that may injure or cause loss, either directly or indirectly, to MTC.

CONTRACTOR shall comply, and shall cause its employees, representatives, agents, subcontractors and subcontractors to comply, with such directions as MTC may make to promote the safeguarding or confidentiality of all its resources.

If requested by MTC, CONTRACTOR shall sign an information security and confidentiality agreement provided by MTC and attest that its employees, representatives, agents, subcontractors and subcontractors involved in the performance of this Agreement shall be bound by terms of a confidentiality agreement with CONTRACTOR substantially the same in its terms.

6. Notice of Security Breach

CONTRACTOR shall immediately notify MTC when it discovers that there may have been a breach in security that has or may have resulted in compromise to PII. For purposes of this section, immediately is defined as within two hours of discovery. The MTC contact for such notification is as follows:

Privacy Officer  
privacyofficer@mtc.ca.gov  
(510) 817-5700

**ATTACHMENT G**

Not Used

**APPENDIX D-1, INSURANCE REQUIREMENTS**

Minimum Insurance Coverages. Contractor shall, at its own expense, obtain and maintain in effect at all times the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under its Agreement with MTC, placed with insurers with a Best's rating of A- or better with a Financial Size Category of VIII or better..

<p>Yes (√)</p>	<p><b>Please certify by checking the box below that required coverages will be provided within ten (10) business days of MTC's notice to firm that it wishes to contract with the firm.</b></p>
<p>___</p>	<p><u>Workers' Compensation Insurance</u> with Statutory limits, and <u>Employer's Liability Insurance</u> with a limit of not less than \$1,000,000 per employee and \$1,000,000 per accident, and any and all other coverage of CONTRACTOR's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of MTC. Such <u>Workers Compensation &amp; Employer's Liability</u> may be waived, if and only for as long as CONTRACTOR is a sole proprietor or a corporation with stock 100% owned by officers with no employees. Should any bridge work require coverage for the United States Longshore Harbor Workers Act, CONTRACTOR agrees to furnish proof of insurance, if required.</p>
<p>___</p>	<p><u>Commercial General Liability Insurance</u> for Bodily Injury and Property Damage liability, covering the premises and operations, and products and completed operations of you and your officers, agents, and employees and with limits of liability which will not be less than \$1,000,000 combined single limit per occurrence with a general aggregate liability of not less than \$2,000,000, a products/completed operations aggregate liability limit of not less than \$2,000,000, and Personal and Advertising injury liability with a limit of not less than \$1,000,000. Products and completed operations insurance shall be maintained for three (3) years following termination of this Agreement.</p> <p>Such policy will contain a Waiver of Subrogation in favor of MTC, BATA, BAIFA, ABAG, and Air District. MTC, BATA, BAIFA, ABAG, and Air District, and their commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds for ongoing and completed operations. Such insurance will be primary and non-contributory, and contain a Separation of Insureds clause as respects any claims, losses or liability arising directly or indirectly from Bidder's operations.</p>
<p>___</p>	<p><u>Business Automobile Insurance</u> for all automobiles owned (if any), used or maintained by CONTRACTOR and CONTRACTOR's officers, agents and employees, including but not limited to owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability that shall not be less than \$1,000,000 combined single limit per accident.</p>

<p>—</p>	<p><u>Umbrella Insurance</u> in the amount of \$1,000,000 providing excess limits over Employer’s Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.</p>
<p>—</p>	<p><u>Errors and Omissions Professional Liability Insurance</u> for errors and omissions and the resulting damages, including, but not limited to, economic loss to MTC and having minimum limits of \$1,000,000 per claim. Such policy shall contain cyber risk coverages including network and internet security liability coverage, privacy liability coverage and media coverage.</p> <p>The policy shall provide coverage for all work performed by CONTRACTOR and any work performed or conducted by any subcontractor/Contractor working for or performing services on behalf of the CONTRACTOR. No contract or agreement between CONTRACTOR and any subcontractor/Contractor shall relieve CONTRACTOR of the responsibility for providing this Errors &amp; Omissions or Professional Liability coverage for all work performed by CONTRACTOR and any subcontractor/Contractor working on behalf of CONTRACTOR on the project.</p>
<p>—</p>	<p><u>Property Insurance.</u> Property Insurance covering CONTRACTOR'S own business personal property and equipment to be used in performance of its Agreement with MTC, property of others including items sold and/or distributed by the RRC, materials or property to be purchased and/or installed on behalf of MTC (if any), and builders risk for property in the course of construction (if applicable). Coverage shall be written on a "Special Form" policy that includes theft, but excludes earthquake, with limits at least equal to the replacement cost of the property. This policy shall include a loss payee provision to cover other parties as their interest may appear. Such policy shall contain a Waiver of Subrogation in favor of MTC.</p>
<p>—</p>	<p><u>Employee Dishonesty/Crime Insurance.</u> An Employee Dishonesty insurance policy covering CONTRACTOR’s employees for loss of or damage to money, securities or other property resulting from theft, at limits \$250,000. This policy should also include Money and Securities Inside the Premises insurance covering money and securities while inside the premises against disappearance, theft and robbery, with a minimum limit of \$10,000. CONTRACTOR shall reimburse MTC for any and all losses within the deductible, for insured losses, the cost to prove the loss, accountants' fees, defense costs including attorneys’ fees and any other fees associated with a claim. The policy shall contain a Joint Loss Payee endorsement naming MTC.</p>
<p>Contractor’s obligation to provide the insurance described herein may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to MTC.</p> <p>Contractor shall be responsible for payment of any deductible or retention on Contractor’s policies without right of contribution from MTC, BATA, BAIFA, ABAG, or Air District. Deductible and retention provisions shall not contain any restrictions as to how or by whom the</p>	

deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.

In the event that MTC, BATA, BAIFA, ABAG, or Air District seeks coverage as an additional insured under any Contractor insurance policy that contains a deductible or self-insured retention, Contractor shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act of Contractor, subcontractor, subcontractor, or any of their employees, officers or directors, even if Contractor or subcontractor is not a named defendant in the lawsuit.

If any insurance specified above is written on a "Claims-Made" (rather than an "occurrence") basis, then in addition to the coverage requirements above, Contractor shall:

1. Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of its Agreement with MTC or the beginning of any work under such Agreement;
2. Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and
3. If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, Contractor shall purchase "extended reporting" coverage for a minimum of three (3) years after completion of the work.

All insurance specified above shall remain in force until all work or services to be performed are satisfactorily completed, all of Contractor's personnel, subcontractors, and equipment have been removed from MTC's property, and the work or services have been formally accepted. Contractor must notify MTC if any of the above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of its Agreement with MTC.

Prior to commencement of any work hereunder, Contractor shall deliver to MTC Certificates of Insurance verifying the aforementioned coverages. Such certificates shall make reference to all provisions and endorsements referred to above and shall be signed on behalf of the insurer by an authorized representative thereof.

The foregoing requirements as to the types and limits of insurance coverage to be maintained by Contractor are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Contractor pursuant hereto, including, but not limited to, liability assumed pursuant to the Indemnification section of its Agreement with MTC.

**By signing below you acknowledge and agree to provide the required certificate of insurance providing verification of the minimum insurance requirements listed above within ten (10) business days of MTC’s notice to firm that it wishes to contract with the firm.**

Representative Name and Title	
Name of Authorizing Official	
Authorized Signature	
Date	

**NOTE: If you were unable to check “Yes” for any of the required minimum insurance coverages listed above, a request for exception to the appropriate insurance requirement(s) must be brought to MTC’s attention no later than closing date/time for receipt of requests for modifications/exceptions. If such modifications/exceptions are not brought to MTC’s attention consistent with the provisions of this RFP, compliance with the insurance requirements will be assumed.**